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## **Nepal**

### **A spiralling human rights crisis**

April 2002

SUMMARY

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Amnesty International is concerned that the human rights situation in Nepal is spiralling out of control amid the escalating fighting between the security forces and the Communist Party of Nepal (Maoist).

This document provides evidence of unlawful killings, “disappearances”, torture and arbitrary arrest and detention under various security laws by police and army personnel since the CPN (Maoist) declared “people’s war” in February 1996. It also includes details of the deliberate and unlawful killing of civilians, the execution-style killings of police officers taken captive, hostage-taking, torture and the imposition of cruel, inhuman and degrading punishments, including “death sentences” by the Maoists. The Maoists have also been responsible for recruiting children as combatants.

Amnesty International appreciates the particular difficult law and order situation this conflict has created in the country. It is urging the government to ensure its response is grounded in the human rights provisions contained in Nepal’s Constitution, the international treaties to which it is a state party and other international human rights standards. At the end of this document, it has made 20 recommendations to the government aimed at establishing viable procedures for investigating human rights violations and preventing further abuses from occurring.

The organization is also calling upon the CPN (Maoist) to at all times respect civilians, prohibit murder, mutilation and torture, reprisals and summary executions and the taking of hostages, and protect and care for the wounded, in line with applicable international humanitarian law standards such as those contained in Article 3 common to the four Geneva Conventions of 1949.

**KEYWORDS:** IMPUNITY1 / POLITICAL VIOLENCE1 / UNLAWFUL KILLINGS1 / EXTRAJUDICIAL EXECUTION1 / ARMED CONFLICT / EMERGENCY LEGISLATION / POLITICAL BACKGROUND / POLITICAL ACTIVISTS / NON-GOVERNMENT ENTITIES / HUMAN RIGHTS DEFENDERS / MILITARY / POLICE / POLICE AS VICTIMS / DISAPPEARANCES / LEGISLATION / FREEDOM OF EXPRESSION / CHILD SOLDIERS / SEXUAL ASSAULT / HOSTAGE TAKING / TRIALS / TORTURE/ILL-TREATMENT / UNACKNOWLEDGED DETENTION / DEATH IN CUSTODY / USE OF EXCESSIVE FORCE / PHOTOGRAPHS

This report summarizes a 48-page document : NEPAL: A spiralling human rights crisis (AI Index: ASA 31/016/2002) issued by Amnesty International in April 2002. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: <http://www.web.amnesty.org/web/news.nsf/thisweek?openvi>

Nepal

## A spiralling human rights crisis

COVER PHOTO: Police in Jajarkot, Mid-Western region, head down to the airstrip at Chaurjahari to secure it for the arrival of the daily flight, July 2001.

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Glossary

APF Armed Police Force  
 ASCPA Anti-State Crimes and Penalties Act  
 bandh strike  
 belana a torture method involving rolling a weighted bamboo stick or other round object along the prisoner's thighs, resulting in muscle damage  
 CDO Chief District Officer  
 CPN (Maoist) Communist Party of Nepal (Maoist)  
 CPN (UML) Communist Party of Nepal (United Marxist Leninist)  
 DDC District Development Committee  
 DPO District Police Office  
 DSC District Security Committee  
 DSP Deputy Superintendent of Police  
 falanga a torture method involving beatings on the soles of the feet  
 ICCPR International Covenant on Civil and Political Rights  
 ICRC International Committee of the Red Cross  
 IGP Inspector General of Police  
 ISDP Integrated Security and Development Plan  
 khukuri a traditional Nepali curved knife  
 MRD Movement for the Restoration of Democracy (Jana Andolan)  
 NC Nepali Congress party  
 NDC National Defence Council  
 NGO non-governmental organization  
 NHRC National Human Rights Commission  
 NSP Nepal Sadbhavana Party  
 NTA Nepal Teachers Association  
 Panchayat a political system of non-party rule  
 PSA Public Security Act  
 RPP Rastriya Prajatranta Party (National Democratic Party)  
 Rs Rupees, Nepali currency  
 SJM Samyukta Jana Morcha, United People's Front  
 TADO Terrorist and Disruptive Activities (Control and Punishment) Ordinance  
 TCA Torture Compensation Act  
 UN United Nations  
 VDC Village Development Committee  
 WGEID UN Working Group on Enforced or Involuntary Disappearances

#### Governments from 1996 to 2001

Prime Minister Sher Bahadur Deuba (NC, RPP, NSP)	September 1995 to March 1997
Prime Minister Lokendra Bahadur Chand (RPP, UML)	March 1997 to October 1997
Prime Minister S.B. Thapa (RPP, NC, NSP)	October 1997 to March 1998
Prime Minister Girija Prasad Koirala (NC, RPP, NSP)	March 1998 to August 1998
Prime Minister Girija Prasad Koirala (NC, ML)	August 1998 to December 1998
Prime Minister Girija Prasad Koirala (NC, UML, NSP)	December 1998 to May 1999
Prime Minister Krishna Prasad Bhattarai (NC)	May 1999 to March 2000
Prime Minister Girija Prasad Koirala (NC)	March 2000 to July 2001
Prime Minister Sher Bahadur Deuba (NC)	July 2001

[map © <http://ncthakur.itgo.com>]

#### Chapter 1: Introduction

Nepal burst onto the international scene in early June 2001. The killings of the King, Queen and eight other members of the royal family dramatically alerted the world to a complex and volatile political situation in the country. It was also the first time many people had heard about the armed conflict that had been spreading across the country since the Communist Party of Nepal (Maoist) – hereafter CPN (Maoist) or the Maoists – declared a “people’s war” in February 1996.

Until the events of June 2001, Nepal had the reputation of being a land of peace and religious tolerance, the birthplace of Lord Buddha. Most people knew it as a land of soaring mountains, raging rivers and pristine forests that drew tourists from around the world. Those more familiar with the country admired its people, whose struggle for democracy in 1990 inspired activists across the region. They knew Nepal had enshrined human rights principles at the heart of its new constitutional order, signed all of the major international covenants, abolished the death penalty and, despite its poverty, has generously hosted thousands of Tibetan and Bhutanese refugees.<sup>1</sup>

However, despite the good intentions of 1990, the human rights of many Nepali people continued to be violated. Between February 1996 and 26 July 2001, according to official figures, 1,060 “Maoists” were killed by police. All of them were said by the government to have been members of the CPN (Maoist) who were killed during “encounters” with the police. At least a further 130 people “disappeared” in police custody and numerous others were tortured. According to government statistics, the number of civilians killed by the Maoists stood at 388 as of December 2001. By early February 2002, the number was said to have increased to 448.

The incidence of human rights violations increased alarmingly after police launched a “security mobilization operation” in late May 1998. According to Home Ministry statistics, the number of people killed by police between 26 May 1998 and 7 November 1998 was 227, compared with 97 between 13 February 1996 and 25 May 1998. The circumstances surrounding such killings indicate that many may have been unlawful.

Peace talks, aimed at ending the “people’s war”, and an accompanying cease-fire broke down on 23 November 2001, after the Maoists withdrew from the talks and attacked police and army posts in 42 districts, reportedly killing at least 30 army and 50 police personnel. The authorities responded on 26 November by declaring a nationwide state of emergency and deploying the army. A Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) was promulgated, granting wide powers to the security forces to arrest people involved in “terrorist” activities. The CPN (Maoist) was declared a “terrorist organization” under the Ordinance.

Over recent months, the fighting has further escalated. In mid-February 2002, around the time of the sixth anniversary of the “people’s war” particularly, there were heavy casualties reported among army and police personnel. For example, 81 police and 55 army personnel were killed on 9 February 2002 during an attack on the headquarters of Achham district.

The declaration of the state of emergency was accompanied by the suspension of sub-clauses (a), (b) and (d) of clause (2) of Article 12, clause (1) of Article 13 and Articles 15, 16, 17, 22 and 23 of the Constitution of Nepal. The rights contained in these clauses – the rights to freedom of thought and expression, assembly and movement, the right not to be held in preventive detention without sufficient ground, and the rights to information, property, privacy and constitutional remedy – were suspended throughout the whole country. On 21 February 2002, amid escalating fighting, parliament extended the state of emergency by three months.

The suspension of Article 23 of the Constitution denies people access to judicial remedy (apart from habeas corpus). It also prevents judicial scrutiny of the measures taken by the government, including the declaration of the state of emergency and the promulgation of the TADO. According to government sources, more than 3,300 people were arrested in the first month after the state of emergency was declared. By early February 2002, this number had risen to more than 5,000.

Among them were many lawyers, students, journalists and teachers suspected of being members or sympathizers of the CPN (Maoist) and a doctor arrested on suspicion of providing medical treatment to Maoist suspects. According to the police, a total of 1,359 “Maoists” had been killed since the start of the “people's war” until early February 2002, about 300 of whom were killed after the declaration of the state of emergency. It is feared that those killed included scores of civilians. In addition, it is estimated that several hundred people, who may have been armed Maoists, were deliberately killed in circumstances where they could have been taken into custody, including when they had been wounded, or after being taken into custody – in breach of standards of international human rights and humanitarian law. The official version of such killings is that people were “killed in crossfire”, “shot when trying to escape” or “shot when running away”.

There is a complete lack of accountability in relation to alleged unlawful killings, including extrajudicial executions and indeed in relation to many other forms of human rights violation. In most cases, the bodies of those killed are disposed of on the spot by the police or army, by burial or burning. This is contrary to existing legal provisions which say that the body of anyone who has died in suspicious circumstances has to be brought to the nearest hospital for post-mortem. This lack of accountability has contributed to a prevailing sense of impunity.

On 20 May 2001 The Katmandu Post reported that the Inspector General of Police (IGP) Pradeep S.J.B. Rana had acknowledged that human rights violations by police had been a significant factor in the escalation of human rights abuses generally. The IGP was reported to have stated: “The police killed innocent people, discriminated against ordinary people based on their social status and maltreated the locals during their patrols.”

More than six years into the “people’s war”, the insurgency has affected lives in almost all of the 75 districts of the country. In more than 60 districts, people have died in the context of the “people’s war”. In addition to conducting armed operations against the army, police and socio-economic targets such as factories or telecommunication towers, the CPN (Maoist) has been responsible for the deliberate and unlawful killings of more than 440 civilians it considered to be “enemies of the revolution”, including alleged informants. Many of the victims have been supporters or members of the Nepali Congress party (NC), although members of other political parties have been among those killed. The Maoists have also been responsible for execution-style killings of police officers who were wounded or taken prisoner or who had surrendered. In addition, in the period between February 1996 and late July 2001 they have taken approximately 500 hostages, tortured scores of people taken captive and imposed cruel, inhuman and degrading punishments, including an estimated 25 “death sentences”. They have also recruited children as combatants. These abuses continued throughout the cease-fire period, albeit on a reduced scale, and after the resumption of the conflict.

By mid-2001, the Maoists had set up “people’s government” in 22 districts, limiting the government's role more or less to the district headquarters. They had held elections, ran development work, established “people's courts” and imposed strict control over anti-social behaviour, including alcohol consumption, violence against women and corruption. They had also imposed their own tax system. Five of the 22 are contiguous districts in the mid-western part of the country. Access to these areas was strictly controlled and prior permission had to be obtained from the Maoists to enter. On 23 November 2001, the day they launched coordinated attacks in 42 districts around the country, the Maoists also announced the creation of a 37-member United Revolutionary People's Council, led by the CPN (Maoist) and a Central People's Government Organising Committee, representing its leadership at the national level.

The growing ability of the CPN (Maoist) and its front organizations to affect the economy of the country – often by using threats or instilling fear – became clear when regular bandhs (general strikes) called across the country resulted in transport, education, industry and markets grinding to a halt. In December 2000 the Maoists' student wing called a week-long closure of all schools to protest

against the singing of the national anthem (on the grounds that it glorifies the King) and the teaching of Sanskrit.<sup>2</sup> They also campaigned for the closure of all private schools and instructed children to attend government-run schools. Most of the English-medium schools in Nepal were affected. In Gorkha, Lamjung, Tanahun and several other districts, all private boarding schools were closed. Maoists have robbed scores of banks and rural development projects for a total of Rs237.4 million (more than \$3 million) (figure as of July 2001 according to the Nepali Times). They have also attacked land registration offices and confiscated the deeds of properties owned by major landowners with a view to re-distribute them among villagers. Representatives of the Maoists have collected “donations” from businesses and individuals, the total amount of which is not known. Many of those who have not paid have been personally attacked or have had their property bombed or burned down.

In April 2001 the government launched an “Integrated Security and Development Plan” (ISDP). According to the Minister of Defence, it involved the deployment of the army to “help create space for the development activity” set out in the ISDP. The ISDP was an ambitious Rs 400 million (about \$5.3 million) package that aimed to kick-start development works in 11 districts where the Maoists were most active. In the first phase the government introduced the ISDP in Gorkha, Rolpa, Rukum, Jajarkot and Kalikot districts. A planned second phase was set to include the districts of Pyuthan, Dailekh, Dang, Surkhet and Sindhuli. The proposed development included the construction of roads, bridges, provision of drinking water, medicine delivery and general administrative work.

[photo caption]

Young women police officers during a police training session in international human rights law organized by AI Nepal in Kathmandu, February 2001. © AI Nepal

[end caption]

Soon after the declaration of the state of emergency and the deployment of the army to fight the Maoists in November 2001, the government announced the suspension of the ISDP in all but one (Gorkha) of the districts.

It is clear that the fragile and young democracy in Nepal is facing a major challenge in halting a worsening human rights situation. While much of the deterioration has taken place in the context of the “people’s war”, there are other factors that have contributed to the sense of foreboding that the human rights of future generations may be at risk in Nepal. They include the royal massacre, which heightened political tensions and instability, the climate of impunity enjoyed by the police and army, and the impact that the turmoil in Nepal may have in a region already marked by high tension, particularly given the relations between Nepal’s three neighbours with nuclear power capacity, China, India and Pakistan.

The way Nepal responds to these challenges will be a crucial point in its national development. Nepal’s response should be clearly grounded in the human rights provisions contained in its constitution, the international treaties to which it is a state party and other international human rights standards.

### Amnesty International's work

Amnesty International has monitored the human rights situation in Nepal with growing concern. It has always enjoyed free access to Nepal. The government has granted permission for its delegates to visit the country, including visits to prisoners held on suspicion of committing crimes in the context of the “people’s war”. In November 1996 Amnesty International delegates visited Rukum and Sindhuli district. In November 1998 the organization’s delegates visited the country to investigate reports of an escalation in human rights violations in the context of the “intensified security mobilization” operation launched by police in May 1998, and raised its findings and concerns with government officials. The organization also expressed concern to representatives of the CPN (Maoist) about human rights abuses by the group. During a visit in November 1999, Amnesty International delegates investigated reports of human rights abuses in Sindhuli, Gorkha and Banke districts. During

a visit by the Secretary General of Amnesty International, Pierre Sané, in February 2000 and a follow-up visit in November 2000, Amnesty International alerted the political leadership to the increasing concern in the international community about the human rights situation in Nepal.<sup>3</sup> The government responded with a number of measures, including the setting up of a National Human Rights Commission (see Chapter 2).

Human rights defenders and victims of human rights abuses met by the Amnesty International delegates cried out for help. They felt caught between the security forces on the one hand and the Maoists on the other and were fearful of all of them. They talked with cynicism about the failure of the authorities to bring alleged perpetrators of human rights violations to justice. The work of Amnesty International and other organizations over the past few years has brought some success. After the visit by the Secretary General in February 2000, two prisoners who had “disappeared” more than eight weeks earlier were released. The appointment in May 2000 of the members of the National Human Rights Commission, nearly four years after the law was passed in parliament, was seen as a result of sustained pressure by Amnesty International and the international community in conjunction with local non-governmental organizations (NGOs).

The national office of Amnesty International in Nepal has also worked with the Nepal Police Academy to provide basic human rights training to officers and junior police personnel. Between 1998 and mid-2001, Amnesty International Nepal trained nearly 2,200 police officers of various ranks. An evaluation of the impact of the training found that the participants' awareness of human rights had increased, especially in relation to anti-torture provisions in international instruments and national laws.

[box]

As an international human rights organization, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights enshrined in the Universal Declaration of Human Rights. Amnesty International is independent of all governments and political ideologies and its working methods are designed to uphold international solidarity, impartiality and protect the organization's independence. Through their work on other countries Amnesty International members uphold the principle of international solidarity with victims of human rights abuses throughout the world. The organization's international bodies produce research and campaigning materials on which this work is based.

[end box]

However, amid the deteriorating human rights situation, the space for human rights work is narrowing. Members of CPN (Maoist) have threatened local human rights defenders, especially in remote areas of the country. Police and army have pressurized human rights organizations to refrain from investigating complaints of human rights violations. A number of lawyers representing people charged in connection with Maoist activities or in torture compensation cases have reportedly received threats. Journalists, especially those based in more remote districts, have been put under pressure by police, army and Maoists not to report abuses. There have also been reports that some journalists were tortured by the security forces and Maoists.

Human rights groups have reported that their ability to operate freely was being undermined by the government, especially after the declaration of the state of emergency. They are finding it increasingly difficult to verify on-the-spot reports of alleged human rights abuses. At least 10 human rights defenders have been arrested or harassed.

On 28 November 2001, the Ministry of Information and Communication published a list of issues not to be published or broadcast. They included “anything that aims to create hatred and disrespect against His Majesty the King and the Royal Family”, “anything that is likely to create hatred

against Royal Nepal Army, police and civil servants and lower their morale and dignity” and “news that supports Maoist terrorists including individuals or groups”. The Ministry encouraged the media to publish official news and reports “regarding bravery and achievements of [the] Royal Nepal Army, police and civil servants”. Fifty-nine journalists were arrested in the first few weeks after the declaration of the state of emergency, 29 of whom had not been released by mid-February 2002. The media generally applied self-censorship of news related to the “people's war”. Several journalists who tried to visit areas where the army was deployed were told to leave. Others were questioned in relation to articles published; some were reportedly tortured. All these developments have made the work of Amnesty International more difficult.

## The way forward

The Nepal authorities have shown willingness to cooperate with the international community. Nepal has acceded to all major human rights treaties and has, under the Nepal Treaty Act of 1993, stipulated that provisions in international treaties to which Nepal is a party will supercede Nepalese law where there is divergence. Representatives of two UN Human Rights Commission mechanisms have visited the country.<sup>4</sup> The government also accepted the services of the International Committee of the Red Cross (ICRC). Since August 1998 ICRC delegates have made several visits to prisons and police stations. After the fighting flared up in November 2001, the security forces denied the ICRC access to places of detention. However, on 24 January 2002, permission was granted to resume prison visits. At the time of writing, to Amnesty International's knowledge, the ICRC had not been given access to army camps.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in her report to the UN Commission on Human Rights in April 2001 of her visit to Nepal in February 2000, recommended that “the international community should support and assist the Government with the resources required, including funding and expertise” to “continue the process of democratization, and to renew its efforts to strengthen democratic institutions and protect the fundamental principles this development depends upon”.<sup>5</sup> In her report, the Special Rapporteur also stressed the “urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses”.

At the time of writing, a process was under way for the government in cooperation with representatives of civil society to draw up Nepal's first National Human Rights Action Plan (HRAP). The first of its type in the South Asia region, the action plan is intended to give equal attention to civil, political, cultural, economic and social rights.<sup>6</sup> Although it was initially due to be put into operation in 2002, there are fears this may not happen.

The experience of the visit to Nepal in 1996 by the Chairman of the UN Working Group on Arbitrary Detention, however, warrants a note of caution. To Amnesty International's knowledge, few of the recommendations made after the visit have to date been fully implemented.<sup>7</sup> There is therefore a strong need for the international community to assist the government of Nepal in its efforts to implement the recommendations made by the experts after their visits.

At a national level, several NGOs have cooperated with the government to improve the human rights situation. The Centre for Victims of Torture in Kathmandu has visited prisons regularly since 1995. It has provided medical treatment to prisoners with the agreement of the Ministry of Home Affairs. By request of the Prison Management Department, it has developed projects for women, children, juveniles and the mentally ill among the prison population.

The world has been slow to wake up to the impending human rights crisis in Nepal. In mid-April 2001, after a sharp increase in the number of attacks on police stations by the Maoists, the European Union issued a declaration expressing profound concern at the escalation of violence and loss of life in the context of the Maoist insurgency. This was the first such statement from the international community. After the Maoists withdrew from talks with the government and attacked

army camps and police stations on 23 November 2001, there was strong condemnation from, among others, the UN Secretary General, India, the USA, China, Russia and the EU. Amnesty International is urging the international community to monitor closely the situation in Nepal with respect to the deteriorating human rights situation and offer whatever help is needed.

The cooperation of the government, key institutions such as parliament, the judiciary, the media, the legal and medical professions and other sectors of civil society is essential if the deterioration in the current human rights situation is to be reversed. At stake is the welfare and human rights of the current and next generations of Nepal's children.

## Chapter 2: Background

Most of the recent grave human rights abuses of concern to Amnesty International in Nepal have occurred against a background of six years of violent political conflict between the Maoists and the state. Very little analysis has been done about the origins of this conflict. However, it is clear that the Maoists have found considerable support among those dissatisfied with the pervasive climate of corruption and the lack of development under the parliamentary democracy established in 1990. Dissatisfaction is particularly strong among the unemployed, women, people belonging to traditional “lower” castes, marginalized ethnic groups and poor people in the rural areas.

The country has a long history of political struggle and many of today's politicians spent years in prison. The country's first multi-party elections held in 1959 were won by the NC, but in December 1960 the King revoked the Constitution and dissolved parliament. The prime minister and other politicians were imprisoned and the nascent democracy was replaced by an absolute monarchy. Political parties were banned and a system of non-party rule (known as Panchayat) was established, centred on the King supported by key figures in the army, the police and the administration. Between 1960 and 1989, political party members gradually reorganized themselves into underground networks. Detention and torture of government opponents and a ban on political activity contributed to growing opposition to the government. Further repression against demonstrations in early 1990 precipitated the fall of the Panchayat regime and the advent of multi-party democracy under a constitutional monarch.

In February 1990 the NC and the communist United Left Front launched the Jana Andolan, also known as the Movement for the Restoration of Democracy (MRD), a largely peaceful campaign of strikes and demonstrations. The authorities attempted unsuccessfully to suppress the protests by force. In mid-April 1990, scores of unarmed demonstrators were shot dead by the security forces in Kathmandu. Under increasing pressure, King Birendra dismissed the government, lifted the ban on political parties and announced the release of political detainees. A multi-party interim government was appointed to oversee constitutional reform and preparations for multi-party elections.

[photo caption]

Army personnel on patrol in Kathmandu during a strike called by the Communist Party of Nepal (Maoist) in early December, following the declaration of the state of emergency and the deployment of the army on 26 November 2001. © Min Bajracharya

[end caption]

However, the initial euphoria of having overturned the Panchayat regime and the hopes that the new democracy would allow equal access to power were soon dashed. The political leaders of 1990, many of them from the urban elite belonging to the “higher” castes, failed to tackle the traditional hierarchies in political, economic and social organizations. Many people continued to feel excluded on the basis of caste or their regional origin. For instance, not a single member of the “lower” castes was elected to the House of Representatives in the parliamentary elections of 1994 and 1999.

“Lower” castes as well as ethnic minorities continued to be under represented in political parties, the judiciary, the legal profession and the civil service.

Social and political tensions were exacerbated by other factors, including the continuing impunity enjoyed by police, the failure of successive governments since 1990 to alleviate the entrenched poverty of Nepal's rural population or to introduce far-reaching land reform long demanded by the poor. These factors are seen by many as explaining the popular support won by the Maoists.

Among increased political instability after four years of rule by a government led by the NC between 1990 and 1994, elections were called early. However, no political party secured an overall working majority in the November 1994 parliamentary elections and the instability increased even further. Between November 1994 and May 1999, there were one minority government and five coalition ones. After the NC won a majority in parliamentary elections in May 1999, a power struggle within the leadership of the NC, particularly between Girija Prasad Koirala and Krishna Prasad Bhattarai, continued to destabilize the country.

International politics have also contributed to the instability. The December 1999 hijacking of an Indian Airlines aeroplane taking off from Kathmandu airport allegedly by members of the Harkat-ul-Mujahideen, the Movement of Holy Warriors, an armed political group active in Kashmir, was seen as one of the first indicators that Nepal had become a place where the rivalry between India and Pakistan was being played out. In April 2001 explosives were found at a house in Kathmandu where the First Secretary of the Pakistan embassy was staying. Between 16 August and 9 September 2000 at least 11 Kashmiris were arrested by Nepali police in Kathmandu, one of whom remained “disappeared” at the time of writing. He is thought to have been handed over to the Indian authorities.

#### The ‘people’s war’

The origins of the CPN (Maoist) lie in the Samyukta Jana Morcha (SJM), United People's Front (Bhattarai), the political wing of the CPN (Unity Centre). In May 1991 the SJM gained nine seats in parliamentary elections, but performed poorly in 1992 local government elections. In 1994 the SJM split on the issue of participation in parliamentary elections. One of the leaders opting to remain outside mainstream politics was Pushpa Kamal Dahal, alias Prachanda. He is said to have founded the CPN (Maoist) in March 1995. Ideologically, the CPN (Maoist) is close to the Communist Party of Peru (Shining Path).<sup>8</sup> Both are members of the Revolutionary International Movement, an umbrella organization of Maoist movements around the world.

The “people’s war”, declared by the CPN (Maoist) on 13 February 1996,<sup>9</sup> aims to establish a “New Democracy” and constitutes an “historical revolt against feudalism, imperialism and so-called reformists”.<sup>10</sup> The immediate reason given by the Maoists for declaring the “people's war” was the failure of the government to respond to a memorandum presented by its representatives to Prime Minister Sher Bahadur Deuba on 4 February 1996.

The memorandum listed 40 demands related to “nationalism, democracy and livelihood”. These included the abolition of royal privileges and the promulgation of a new constitution, and the abrogation of the Mahakali treaty with India on the distribution of water and electricity and the delineation of the border between the two countries.

On 13 February 1996, the day the “people’s war” was declared, there were eight incidents reported from five districts, including attacks on police posts and local administrative offices, such as offices of the Chief District Officers (CDOs) and District Development Committees (DDCs) constituting the government at district level. In the following weeks, the violence escalated, particularly in Rolpa and Rukum districts in the Mid-Western Region, one of the more deprived areas of Nepal and the stronghold of the Maoist movement. There were further attacks on police stations, banks, offices of

Village Development Committees (VDCs), local landowners, and politicians of the NC and other mainstream parties. There were also attacks on a number of local offices of international NGOs.

The Maoists gradually spread their activities to other districts. As of mid-2001, they were present and active in all but the most remote districts of the country. By February 2002, according to government statistics, they had killed 538 policemen.

In areas where they were strongest, the Maoists set up parallel political systems to the state's, including "people's courts". In Rolpa district, for instance, it was reported that no new cases were filed in the district court during 2000 as all cases were being "adjudicated" by the Maoists. After the killing of the King, Queen and eight other members of the royal family in June 2001, Prachanda – the leader of the CPN (Maoist) – claimed that the killings were a conspiracy against Nepal by "national and international forces, who also want to suppress the Maoist movement". The Maoists also rejected the report of an official commission of inquiry appointed by the new King into the massacre. According to the statements from witnesses contained in the report, Crown Prince Dipendra was responsible for the killings and subsequently killed himself. On 11 June Prachanda appealed for the establishment of an interim government which would "... play the historic role of institutionalizing the republican system." The Maoists also stepped up their activities in and around Kathmandu. In late June and early July 2001, a number of bombs exploded in the centre of Kathmandu, the first such attacks since the declaration of the "people's war". Near the bombs, banners were put up calling for the King and Prime Minister to be brought down. Although no one was injured by these bombs, they spread fear among the population.

#### The government's response

It is generally accepted that the authorities were slow to react to the declaration of the "people's war". When Amnesty International met government officials in November 1996, nine months after the "people's war" was declared, several ministers stated that the government had not yet devised a detailed strategy to seek a political solution or to address the human rights violations reported. In March 1996 the Prime Minister had called an all-party meeting in which eight political parties participated. Press reports stated that the government had decided on a two-track approach: "re-asserting security measures, and concomitantly exploring possible political solutions without resorting to human rights violations."<sup>11</sup> However, the measures announced by consecutive governments in the next five years were largely designed to address the law and order situation rather than the wider causes and issues of the conflict. Several attempts at entering a dialogue failed, often falling victim to manoeuvring within or between political parties.

In early November 1995, prior to the formal declaration of "people's war", a police operation code-named "Operation Romeo" was launched in Rolpa district. According to the then Additional Inspector General of Police, this involved police attempting to "win the hearts and minds of the local people" thereby denying the CPN (Maoist) its support base. It also involved police encouraging local officials to set up development projects.

However, local human rights organizations reported that many human rights violations were committed during "Operation Romeo". The arbitrary arrest and detention of more than 200 members and supporters of the SJM, many of whom were ill-treated or tortured in custody, was seen by observers as having increased support for the "people's war". In addition, many of the development projects failed to materialize.

On 26 May 1998 a new government led by Prime Minister Girija Prasad Koirala of the NC launched an "intensified security mobilization" operation, commonly referred to as operation "Kilo Sera II".<sup>12</sup> It involved the transfer of armed police units from Kathmandu to the districts considered "most affected" by the "people's war", including Rolpa, Rukum, Jajarkot and Salyan in the Mid-Western Region, Gorkha in the Western Region and Sindhuli in the Central Region. There was an

alarming increase in reports of grave human rights violations, especially unlawful killings and “disappearances” during the operation (see Chapter 3).

In July 1998 the government announced a general amnesty for members of the CPN (Maoist) who surrendered and agreed to “give up arms and participate within the democratic framework as laid out by the Constitution”. A year later the government announced that Rs 30 million (about \$391,600) had been made available to finance the implementation of the Ganesh Man Singh Peace Campaign package aimed at rehabilitating Maoist activists who agreed to surrender and paying relief to victims of abuses by the Maoists.<sup>13</sup> Under the scheme social utilities destroyed by the Maoists would be rebuilt. In November 1999 a task force convened by the Home Minister to implement the package announced that relatives of victims who had been killed by the Maoists would receive an allowance and that scholarships would be provided to children in affected families up to secondary level. In each district, a committee with the CDO as convenor was formed to implement the package. When Amnesty International delegates asked CDOs in November 2000 about the implementation of the Ganesh Man Singh Peace Campaign, they were told that the fund had been used to provide financial assistance to victims of Maoist violence. Amnesty International did not find any evidence that the money had been used to support “rehabilitation” projects for Maoists who had surrendered to the police. It also found that there was no proper record keeping of how the money was being spent. Up until October 2000, according to official figures, 2,506 people had surrendered to the police. By early February 2002, more than 11,000 were said to have done so. Among them were many people who had given food or shelter to the Maoists, often under duress. Others had been active at the lower levels of the “people's government” set up by the Maoists.

As the violence spread across the country and the number of police personnel being killed and injured increased, senior police officers acknowledged demoralization and lack of relevant training among police to fight the Maoists.

Police complained that they did not have the necessary powers to arrest and keep in custody those suspected of being involved in violent activities. Consecutive governments attempted to introduce new legislation to widen the powers of the police, but no such legislation was passed through parliament mainly because of the prevailing political instability. However, in January 2001 various changes in the legal framework were introduced via Ordinances.<sup>14</sup>

One of the Ordinances passed in January 2001 established a paramilitary police force (the so-called Armed Police Force, APF). Another amended the Local Administration Act to give additional powers to the administrators of the five developmental regions, including powers to “maintain or arrange for maintaining peace, security and order within the region”. The government also formed a Special Court under the Special Court Act, 1974 to hear cases against people charged under the Anti-State Crimes and Penalties Act (see Chapter 3). In August 2001 the Ordinances were approved by parliament and became law.

The government also set up security committees at the village, district and regional level. The role of these committees was vaguely defined as “to extend cooperation in the task of maintaining peace, security and order”. Amnesty International was informed by the authorities that the committees at village level were responsible for appointing guards, who, in the event of activity by members of the CPN (Maoist), would alert the nearest police station. The guards were not to be provided with arms by the central government, but could obtain gun licences. Observers point out that similar committees during the Panchayat era were used to stop political opposition. They also point out that although the committees are said to report to the Home Ministry, there is no transparency about their work and the Home Ministry has never reported to parliament about them. In April 2000 Prime Minister Girija Prasad Koirala activated the National Defence Council (NDC).<sup>15</sup> In October 2000 it was decided to station the army in 16 district headquarters after the Maoists attacked Dunai, the headquarters of Dolpa district and killed 14 policemen, robbed over Rs 60 million (about \$785,000) from the local bank and freed all prisoners from jail. After increasing numbers of

police personnel were killed, abducted or taken hostage during attacks on police posts in early 2001, on 13 July the army was for the first time directly deployed against the Maoists. Soldiers were sent to Holeri and Nuwagoan VDCs in Rolpa district with directions to obtain the release of 69 police officers and two civilians abducted by the Maoists the previous day during an attack on Holeri police post. Reports of what happened in this remote area were unclear. There apparently was no engagement in combat, and the army withdrew after several days. Soon after, Prime Minister Girija Prasad Koirala resigned. He was replaced by Sher Bahadur Deuba.

After the resumption of the conflict in November 2001, the army, the newly-formed APF and the police reportedly began joint operations, including “cordon and search” operations, during which they carry out house to house searches. Neither the army nor police has experience of counter-insurgency operations. The hilly and thickly-forested terrain, much of which is inaccessible by road, present a further challenge to the security forces. The security forces also face difficulties in identifying those they want to detain among the civilian population. Reports indicate that during “cordon and search” operations, they have arrested people whose names featured on lists provided by the local administration. The lists reportedly contain names of people who were suspected of having provided food or shelter to the Maoists and of having attended Maoist meetings during the cease-fire. The heightened security risks have increased the expectations of the newly-formed National Human Rights Commission (NHRC) to monitor the human rights situation and remedy violations. NHRC members were appointed on 5 June 2000 – nearly four years after the legislation for the NHRC’s establishment was passed in parliament.<sup>16</sup> At the time of writing the NHRC was still in its formative stage and its first annual report had not been made public. The effective functioning of the NHRC was hampered by insufficient financing and staffing. The government allocated only Rs 5 million (about \$65,400) against the Rs 25 million (about \$330,700) requested by the Commission for its first year. There was a lack of cooperation from the civil service, particularly the home ministry and police. In some cases of “disappearances”, the police apparently blatantly lied to the NHRC. For instance, Amnesty International learned that police in writing denied the detention of a Maoist suspect held at Hanuman Dhoka police station in February 2002, while on the same day allowing his relatives to see him.

The government has also initiated various reforms in the police and judiciary with the assistance of the international community. For instance, 26 community centres were set up in 2001 under a community policing program. In August 2000 a Criminal Justice Task Force was formed under the Attorney General to make recommendations for the reform of the criminal justice system. The task force reported to the government in August 2001. It reportedly recommended that a new Penal and Criminal Procedure Code would be drawn up to replace the Muluki Ain (Civil Code) of 1962.

### Attempts at dialogue

In light of the radical nature of the main demands of the Maoists, in particular the de facto abolition of the constitutional monarchy and the establishment of a people's republic, it has been difficult for successive governments to enter into a meaningful dialogue with the Maoists. Nevertheless, attempts have been made.

An eight-member “High Level Consensus Seeking Committee” chaired by Sher Bahadur Deuba was appointed in November 1999 by Prime Minister Krishna Prasad Bhattarai. The leader of the CPN (Maoist) in a letter to the Committee in June 2000 indicated his willingness to sit down to talks on condition that a number of demands were met, including a ceasefire from the date the talks begin, an inquiry into the whereabouts of Maoist supporters who were detained and subsequently “disappeared”, and a judicial investigation into a number of incidents, including the killing of civilians and burning of villages in Khara VDC, Rukum district in February 2000. On 7 August 2000 the Maoists’ leader ruled out immediate talks. He accused the Prime Minister of attempting to enlist India's support in joint operations against armed opposition groups, including the CPN (Maoist), operating along the India-Nepal border, and reiterated that the party would only engage in talks once their

conditions were met. The mandate of the Consensus Seeking Committee was not extended when it ended in October 2000. The Committee's final report described the “people's war” as a political problem arising from the country's socio-economic structure, and urged the government to hold talks with the CPN (Maoist) about their demands, apart from those calling for constitutional changes. It also suggested that the security apparatus be strengthened.

Throughout the latter part of 2000, further attempts were made to initiate a dialogue. However, this process was hampered by disagreement and political manoeuvring, especially within the NC. After the resignation of Prime Minister Girija Prasad Koirala, the newly-appointed Prime Minister Sher Bahadur Deuba and the Maoists swiftly agreed a cease-fire on 23 July 2001. Three rounds of talks were held between both sides. However, negotiations broke down in late November 2001 over the political demands of the Maoists, in particular the demand for the setting up of a constitutional assembly.

### Chapter 3: Abuses by state agents

When human rights principles were put at the heart of the new constitutional order in 1990, there was enormous hope that the patterns of abuses by state agents would end. Those hopes have not been realised. Since 1990, and particularly since intense security operations were launched in May 1998, a wide range of human rights violations have been regularly reported. They include extrajudicial executions, “disappearances”, torture, arbitrary arrests and detention, and unfair trials.

One of the main reasons for the continuation of human rights violations has been the impunity enjoyed by police and other state agents. Successive governments have consistently failed to ensure that proper investigations – a prerequisite for achieving justice – are held in cases of human rights violations. Indeed, the few investigations that have been carried out were done by the police or army themselves or by officials of the Ministry of Home Affairs or Ministry of Defence, under whose authority the police and army respectively function. Such investigations have been acknowledged by various officials to be intended as a response to public pressure rather than as a systematic means of addressing and preventing human rights violations.<sup>17</sup> The result is that very few alleged perpetrators of human rights violations have been brought to justice.

Apart from the NHRC, there is no permanent mechanism to investigate independently allegations of human rights violations by the police or army. Under the Commission of Inquiry Act, 1969 an independent commission can be appointed by the King on the advice of the government. However, this power has rarely been used. In 1990, two commissions were appointed to investigate respectively “loss of life and property” during the MRD in 1990 and “disappearances” during the Panchayat era. The first commission, known as the Mallik Commission (after its chairman, judge Janardhan Lal Mallik), in its report submitted to the government in late 1990 recommended, among other things, the prosecution of several alleged perpetrators of human rights violations, including several ministers and senior police officers. However, despite widespread campaigning, no action was taken on these recommendations.

The last time a commission of inquiry was appointed under the above Act was in 1993 after nationwide strikes were called by the CPN (United Marxist Leninist – UML) against the findings of an ad hoc commission that had investigated the death of the party's General Secretary, Madan Bhandari, and another party member when the jeep in which they were travelling careered off the road in May 1993. The commission was reported to have concluded that there was no conspiracy to murder Madan Bhandari but recommended that further issues be examined. To Amnesty International's knowledge, no further investigations into the death of Madan Bhandari were initiated. In late 1993 Authority Abuse Cells were set up in all regional police headquarters to investigate reports of human rights violations by the police. The exact working methods of these cells are unclear, nor is information publicly available about the number or kinds of cases investigated by them. During a visit to Nepal in February 2000, Amnesty International delegates were told by the then Inspector General of

Police that “in cases where there is controversy”, the Home Minister will appoint a special team to investigate the incident; this team will include at least one representative of the police department. He provided Amnesty International with a list of 23 police officers against whom action had been taken for “abuse of authority and human rights violations”. On examination, Amnesty International found that 14 of the 23 officers were facing criminal charges in a court of law relating to three cases of human rights violations, including charges of rape and murder. The other nine officers were facing only disciplinary action in relation to offences such as vandalism, non-payment of a hotel bill and bribery.

Like the police, the army has an internal process of investigating allegations of mis-conduct. However, very little is known about the exact nature of the investigations or about any trial procedures used.

Amid increasing pressure to tackle the climate of impunity, the government in 1996 passed the Torture Compensation Act (TCA). This provides that victims of torture or relatives of people who died in custody as a result of torture can apply for compensation to the local district courts. The passing of this law has to a large extent fulfilled the country's obligation under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which it ratified in 1990, to provide victims of torture with “an enforceable right to fair and adequate compensation”. However, in many respects it remains a remedy without teeth, not least because torture is not defined as a crime in the Act.<sup>18</sup>

### Unlawful killings

The Constitution of Nepal does not explicitly guarantee the right to life.<sup>19</sup> Since the start of the “people’s war”, there has been increasing concern that the authorities have failed to impose strict limitations on the use of force and firearms by the security forces or to take appropriate actions against abuses. After the declaration of the state of emergency, this concern was heightened. It was feared that the army and police would interpret the suspension of fundamental rights as set out above to include a suspension of the right to life. Under Article 4 (2) of the ICCPR there can be no derogations from the duty to uphold the right to life even “in time of public emergency which threatens the life of the nation”.

Unlawful killings, including extrajudicial executions by police, started about one year after the start of the “people’s war” and many were reported after the launch of the “intensified security mobilization” operation in May 1998. After February 2000 there was a marked decline in the number of killings, attributed to increasing international pressure on the government, a changing ground situation with a weakened and demoralized police force largely confined to main police stations, and the ongoing attempts to initiate a dialogue between both sides. However, after the army was called out and the state of emergency imposed in late November 2001, the number of alleged unlawful killings increased dramatically. The reported incidents included killings of civilians in reprisal for the killing of police personnel by members of the CPN (Maoist); killings of armed members of the CPN (Maoist) in circumstances where they could have been taken into custody or where they already had been taken prisoner, and the avoidable use of lethal force.<sup>20</sup>

The authorities’ failure to condemn the police and army for extrajudicial executions has been a disturbing and contributing factor in the continuing cycle of such killings. To date, none of the alleged unlawful killings reported during police and army operations in the context of the “people's war” has been independently investigated, and no member of the police or army has been charged with murder or related offences.

On 22 February 2000, 15 civilians were killed by police apparently in reprisal for the killing of 15 policemen during an attack by members of the CPN (Maoist) on a police station at Ghartigaun, Rolpa district three days before. Thirty police officers from Simrutu police station were sent to Kumcheri, in Khara VDC, Rukum district to search for Maoists believed to have participated in the

attack on the police station. At around 5am police spotted seven or eight Maoists hiding in the jungle. A group of police chased them and one policeman died in an exchange of fire. Reinforcements reportedly arrived by helicopter from Musikot police station (Rukum), Salyan, Nepalgunj and Jajarkot. Police started to burn houses in Khumcheri, Haiwang, Kural and Pokhari. In Pokhari, seven civilians were killed. A further seven were killed in Kural and one more in Daya. According to survivors, police dragged people out of their houses and shot them. All those killed were supporters of the NC. They included a Ward Chairman, Trivan Wali, and a 16-year-old boy, Tikaram Khatri.

[photo caption]

The surviving members of the family of Govinda Khadka who was killed by police in Khara Village Development Committee, Rukum district, in February 2000. © unknown

[end caption]

The then Minister of Home Affairs reportedly denied in a newspaper interview that there had been any extrajudicial executions in Nepal when asked about the killings in Khara VDC.<sup>21</sup> He stated that the report of an inquiry headed by a Joint Secretary in the Ministry into this and other incidents reported in the context of the Maoist “people's war” would be published “in due course”. Amnesty International urged the authorities in March 2000 to immediately make public the report of the inquiry so that the relatives and others could assess the basis on which the inquiry came to the apparent conclusion that these were not extrajudicial executions. The report was never made public.

Harikala Poudel, a 21-year-old member of the CPN (Maoist), was killed by police at Nalma VDC, Lamjung district on 6 September 2000. She had reportedly gone to Nalma with other Maoist students and women activists to warn the teachers in the village not to teach Sanskrit. According to witnesses, police from Borletar police station grabbed Harikala Poudel while she was collecting water from a tap. They dragged her away and shot her within a few minutes. Her body reportedly had a bullet wound in the chest. The police reportedly took her body to the nearby jungle and threw it in a small ravine. The DSP in Lamjung district, when asked by Amnesty International about the incident, said that Harikala Poudel had been killed when police returned fire from a group of Maoists. He said that two police officers had been injured in the shooting, but this was not confirmed by independent sources.

On 28 November 2001 at Tribhuvannagar, Dang district, 11 farmers (Asharam, Krishna, Jogi, Ripu, Ramu, Parashu, Situ, Jagaman, Khushilal, Rup Lal and Sangra Chaudhari) were reportedly lined up by the army after they had admitted to being sympathizers of the Maoists and deliberately killed. These people, although politically sympathetic to the Maoists, were not armed. Chandradip Yadav, Uttimlal Yadav and Devkumar Yadav, relatives of a known Maoist leader, were reportedly killed by police at Janakpur town, Dhanusha district on 6 December 2001. According to the Superintendent of Police, they were killed while trying to escape from a police van on their way to the district police office, after arrest. However, other sources allege they were forced to get out of the van and told to run, and then deliberately killed by police.

There have been many such reports of the police and army summarily executing members or alleged members of the CPN (Maoist) already taken into custody in blatant violation of international humanitarian law as well as international human rights standards. In late January 2002, Amnesty International wrote to Prime Minister Sher Bahadur Deuba urging him to order independent investigations into 20 reports of killings where the Ministry of Defence claimed that the person killed was a Maoist who was shot dead while trying to escape custody or running away during a “cordon and search” operation. It put before the Prime Minister evidence of two incidents where eye-witnesses have stated that civilians were deliberately killed by the security forces. The official version of these incidents put out by the Ministry of Defence still stated that those killed were Maoists shot dead while trying to escape custody or while running away during a “cordon and search” operation.

One of these incidents, reported on 6 January 2002, involved a 14-year-old mentally disabled boy, Dalle Nepali, from Ward No. 6, Pipaltari, Myagdi district, who was killed by the security forces at Sankhoriya Das area, Katuwachauwari, in nearby Parbat district. The security forces claimed that the

boy was a member of the CPN (Maoist) who had been killed while trying to escape from a “cordon and search” operation. They also claimed he was among a group of Maoists who had ambushed the security forces. However, his relatives say that he had gone to Beni Bazaar to attend a health clinic to get treatment for a cleft lip. According to witnesses, the boy had indeed run away when he saw the army, and soldiers had shot at him without making an attempt to arrest him.

There have also been regular reports that the police and army have forced villagers to assist them when confronted by armed Maoists, putting civilians at grave risk. Such actions violate international humanitarian standards.

In an incident reported from Sindhuli district on 3 November 1998, a villager forced by police to assist them witnessed the killing of five Maoists with no apparent attempt to detain them. He reported how police forced him to enter a house where they suspected armed Maoists were hiding. One of the alleged Maoists threw a home-made explosive at him. While police were taking shelter to escape the explosion, the villager ran outside. The police officers shouted at him not to run or he would be killed. He subsequently heard shots coming from the house. When he re-entered the house later, he saw the bodies of five alleged Maoists. There were no wounded among the police officers. He saw explosives, but no guns belonging to the Maoists.

The next day, when police returned, one of the bodies was missing. Police demanded that the villagers explain what had happened to the body “or become the fifth body yourselves”. The police burned the four bodies near the river. A villager who had been told by police to guard the house was arrested on suspicion of helping the Maoist to escape. He was tortured for three days in police custody. The torture stopped only after the fifth body was found by villagers in the forest: it appears that the fifth wounded Maoist had regained consciousness and tried to flee, but had died soon after. Many killings have occurred during attacks on gatherings and meetings of unarmed sympathizers of the CPN (Maoist). The police and army have used lethal force indiscriminately or without first assessing whether lives would be put at risk or whether there was a possibility of detaining alleged Maoists without putting lives at risk.

Harischandra Shrestha and Bipana Nakarmi, two unarmed sympathizers of the CPN (Maoist), were killed by police on 21 April 1999 when they went to Bakrang village in Gorkha district to announce a forthcoming strike called by the Maoists. A villager, Ram Bahadur Aryal, who had come out of his home when he heard the shooting, was also shot dead. His brother, Sanjeev Aryal, was shot and injured in his left arm and left leg. When a delegation of local human rights activists raised its concerns with the then DSP of Gorkha district the next day, he reportedly confirmed that Harischandra Shrestha and Bipana Nakarmi had not been armed. He reportedly added, “They are Maoists, so we shot them.”

On 14 January 2000, seven villagers and two members of the CPN (Maoist) were killed by police in the village of Dhungal in Dhanku VDC, Achham district. According to survivors interviewed by Amnesty International, three armed Maoists entered the village and ordered people to provide food and shelter to 50 to 60 members of their group, who were to perform a cultural program as part of their political campaign. The following day the villagers were ordered to attend the program, which was set up in the local school. The police were reportedly alerted at around 5pm. A patrol of 14 police officers was on its way to the school when a Maoist keeping watch fired a warning shot in the air. All but two of the Maoists managed to flee. As the first police shots rang out, the villagers ran out of the school and took cover. Reports indicate that the police fired indiscriminately and without warning. Four villagers were reportedly shot dead while sheltering in a tea shop when police officers fired indiscriminately through the shop window. Three others were shot dead while running away. Eleven other villagers were wounded. Witnesses said that the two Maoists who had not escaped were summarily executed at least eight hours later after they had been captured unarmed by the police. According to testimonies, the bodies of all those killed were burned without being formally identified. Two 16-year-old youths were reportedly among those killed: Madan Kumar Chalaune and Padam Dholi.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions during her visit to Nepal in February 2000 investigated the killings in Dhungal. According to government representatives she met, a police patrol went to the village to apprehend an armed CPN (Maoist) group. While the police were surrounding the village the armed Maoists retreated while exchanging fire with the police. Nine people – seven villagers and two members of the CPN (Maoist) – were killed. According to government officials, all seven villagers were killed when the retreating Maoists detonated bombs and hand grenades in the village.

The UN Special Rapporteur reported that the testimonies she took “indicate that the police when launching their assault fired their rifles indiscriminately at the houses and shops where civilians were taking shelter”. She also noted that the then Home Minister visited Dhungal shortly after the incident and that compensation was paid to the families of the villagers killed. She expressed her deep concern, “that despite strong indications of indiscriminate use of firearms and possible extrajudicial executions by the police, no independent investigation has been initiated”. In meetings with the Special Rapporteur both the Home Minister and the Inspector General of the Police maintained that all the victims in the incident were killed by the retreating Maoists. The findings of a Home Ministry inquiry were never made public.

In the period immediately following the declaration of the state of emergency, there were several reports that civilians had been shot dead by the army from helicopters. In one such incident reported on 30 November 2001, five civilians, Bali Ram Thapa, Man Bahadur Gurung, Dil Bahadur Gharti, Gayatri Gurung and Phursi Roka, were reportedly killed by shooting from an army helicopter while they were observing a religious festival (Baraha pooja) at Meldhara, Rolpa district. After widespread protests against shootings from helicopters, such incidents stopped being reported. Amnesty International recognizes that police and army officers often have to make split-second decisions in difficult circumstances, and that it does not have access to the full facts in all the cases of alleged unlawful killings that have been reported. Nevertheless, there are serious doubts in many cases whether those killed were armed Maoists and whether, if they were, they offered an immediate threat to life when they were shot. Several of the victims, who include juveniles, were not armed with guns. Others were only carrying khukuris.<sup>22</sup> Others were killed while fleeing. Some were shot allegedly after they had been disabled. In several cases, witnesses independently disputed police accounts of the shootings.

In addition to the numerous killings by the police and army reported in the context of the “people’s war”, there have also been regular reports of killings when the police or army have fired on demonstrators or strikers in such a way as to contravene international standards concerning the use of force and firearms.<sup>23</sup> For instance, on 3 and 4 June 2001, police reportedly shot dead three people and wounded scores of demonstrators who had taken to the streets of Kathmandu after the killings of the royal family.

#### Legal framework

The inadequacies of the current legal framework applicable to human rights violations have contributed to the prevailing climate of impunity in relation to unlawful killings. So far, none of the alleged unlawful killings reported in the context of police and army operations against armed members of the CPN (Maoist) have been independently investigated. In relation to so-called “encounters”, there is a complete lack of accountability. Compensation for unlawful killings has only been paid by the government in very few cases.

At a district level, police act under the direct control of CDOs. Under Article 6(1)(b) of the Local Administration Act, 1971, the CDO must issue a written, signed order authorizing the police to use lethal force. The law provides that if there is no time to issue a written order, a verbal order can be issued, which must be confirmed in writing as soon as possible, and in any case within 24 hours. If this is not possible, the police have to report in writing to the CDO clarifying why it was not possible and

setting out the circumstances in which officers were required to use force. An internal inquiry will then be carried out to ascertain whether the officers acted within the law.

It is therefore clear that in legal terms the use of lethal force is considered to be an extreme measure, to which police can only resort when strictly unavoidable to protect life and that a decision to use lethal force has to be taken on a case by case basis by the CDO, unless in exceptional circumstances. However, when Amnesty International delegates in late 1996 asked the CDO in Rukum about several incidents of disputed shootings, the CDO admitted that he had delegated the authority to decide on the use of lethal force for an unlimited period to the DSP and other senior police officers. He had done this on 21 February 1996, shortly after three bombs had been found in Musikot, including at his office. In the following months, there had been frequent incidents of disputed shootings in Rukum district, in which scores of people were killed. Amnesty International was told by the CDO that internal inquiries into the killings found the officers' actions to have been justified in all cases given the threat encountered or perceived at the time. The reports of the inquiries, however, are not available to the public.

[photo caption]

A Nepalese riot policeman holds his colleague as he shoots rubber bullets at demonstrators near the royal palace in Kathmandu on 4 June 2001. The demonstrations followed the killing of 10 members of the royal family, including the King and Queen. © Reuters

[end caption]

In some of the cases the various authorities, including the police and CDO, gave Amnesty International conflicting accounts, casting doubt on the thoroughness of the internal inquiries or whether they were carried out at all. In addition, people have independently given Amnesty International similar accounts of how the authorities sanction extrajudicial executions. In late 1996, for example, a prisoner and a former prisoner independently told Amnesty International that a DSP had scolded a junior police officer for bringing prisoners to the police station. He is alleged to have said: "Why did you not kill them along the way?"

In November 1999 the then CDO in Gorkha district told an Amnesty International delegation that 21 "Maoists" had been killed in the district during that year. He said it was not necessary to invoke the provisions of Article 6(1)(b) of the Local Administration Act in such cases. He said he gave approval for the use of lethal force after the police informed him of killings. If the names of those killed feature on a list of suspected Maoists which police had provided earlier, he was satisfied. Under the newly-promulgated TADO, orders can be issued by CDOs or senior officers of the army or police granting powers to the security forces to "use necessary force or weapons" in various specified circumstances, including "if it appears that a person who is carrying out or who has carried out terrorist and disruptive act can run away or cannot be arrested"; or "if any resistance is put up when someone is being arrested ... or when a search is carried out ... or while taking any other action". The widely formulated provision appears to be the legal framework within which the army, APF and police were operating and regularizing the use of force.

According to information provided by the Inspector General of Police in February 2000, all reports of "encounter" killings are investigated under provisions of the Police Act, 1955 and if police officers are found to have breached disciplinary rules, they are punished under the Act. Article 22(a) of the Police Act contains provisions for the disposal of unclaimed dead bodies of people who died of natural causes and for the bodies of people who are found to have died as a result of an accident, by committing suicide or "in any other suspicious circumstances". The Act does not contain any provisions specifically dealing with cases of suspicious deaths at the hands of the police, but it can be assumed that these cases would fall in the category of killings "in any other suspicious circumstances". In that case, the requirement is for the bodies to be cremated only after investigations, including autopsy, have been concluded.

Principle 12 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions requires that in all suspected cases of extra-legal, arbitrary and summary executions, “(t)he body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician...”.

As stated above, very few autopsies have been carried out in cases of alleged “encounter” killings. In most cases, the bodies of those killed are reportedly disposed of on the spot, by burial or burning. Police also allow insufficient time for proper identification before bodies are cremated or buried, making allegations of extrajudicial executions by the police extremely hard to investigate and verify.

The authorities have argued that bodies are disposed of without post-mortem because it is impossible to transport them from the remote areas where “encounters” often occur to the district headquarters where facilities for the performance of autopsies are normally available. They claim that the police are mostly travelling on foot and that often the nearest hospital is several days’ walk away from the scene of the incident. However, to Amnesty International’s knowledge, most if not all bodies of police officers killed during “encounters” have been recovered (often by helicopter) and returned to their families. The validity of the authorities’ arguments thus has to be questioned.

‘Disappearances’ and unacknowledged detention

On 21 May 1999 Milan Nepali, a journalist, was seen being put into a police van by eight policemen, four in police uniform and four in civilian clothes. The day after his arrest, relatives went to the nearby police station where an inspector told them that there was no record of his detention there. They also inquired at police headquarters but were given no information. The next day the relatives returned to police headquarters with a change of clothes and some medicine. A DSP accepted the clothes and later returned to the family the clothes the journalist had been wearing on the day of his arrest in the same bag as the clean clothes had been brought in. Despite this, police continued to deny he was in their custody.

Lawyers filed a habeas corpus writ on his behalf in the Supreme Court at which the witnesses to his arrest gave evidence. The authorities still denied his arrest. The court dismissed the petition on the basis that not enough evidence had been presented. Two months later, two newspapers reported that the journalist and four others who had “disappeared” had been seen in the custody of a special police unit at a certain police barracks. A new habeas corpus petition was filed. A letter sent by the court addressed to the location of the barracks was reportedly returned stating there was no such police present at the address. Nearly three years later, the journalist and the four others remain “disappeared”.

[photo caption]

Lawyer Rajendra Dhakal standing outside the offices of the Gorkha District Bar Association in 1994. He was arrested by police in Tanahun district in January 1999 and his whereabouts remain unknown.

© Private

[end caption]

Rajendra Dhakal, a lawyer and human rights defender, has not been seen since his arrest by police on 8 January 1999 from Jamdi, Khairenitar in Tanahun district. Also arrested with him were two teachers from the village, Prem Bahadur Thapa and Naya Datta Adhikari. All three were taken to the Bel Chautara area police office, about 10 kilometres away. On arrival at the area police office the two teachers were separated from Rajendra Dhakal who was put into a cell on his own. Prem Bahadur Thapa and Naya Datta Adhikari were released two days later. The whereabouts of Rajendra Dhakal, last seen by the two teachers at the Bel Chautara area police office, remain unknown.

At 5am on 14 January 2002 three army personnel in uniform came to Surya Prasad Sharma's house at Srinagar Tole, Kalika, Baglung district. Surya Prasad Sharma had been a member of the CPN

(Maoist) but had returned home to surrender himself to the police. The army personnel searched his home for ammunition, but did not find anything. They then arrested him and took him to the Kalidal Gulma army barracks for questioning. His wife tried to visit him on several occasions but was not allowed to see him. She was also not allowed to give him any clothing or food. On 22 January, a private source informed the family that Surya Prasad Sharma had unsuccessfully tried to escape from custody earlier that day and was therefore being severely beaten. This information was corroborated by another private source.

However, when relatives visited the army camp on 23 January 2002, a soldier at the gate told them that Surya Prasad Sharma had escaped on 21 January while being taken to Amalachour village to point out a Maoist hide-out. The soldier said that Surya Prasad Sharma had jumped in the Kaligandaki river on the way back to the army barracks. Since then, Surya Prasad Sharma's fate or whereabouts remain unknown.

A disturbing pattern of "disappearances" and long-term unacknowledged detention emerged after May 1998 when the police launched the "intensified security mobilization" operation. Between 1998 and mid-2001 Amnesty International recorded more than 130 "disappearances". Among the victims were more than 70 farmers, 13 women, 13 students, four teachers, three journalists and a lawyer. After the breakdown in the talks between the government and the Maoists and the deployment of the army in late November 2001, there were alarming reports that more than 2,500 people arrested on suspicion of being members or supporters of the CPN (Maoist) were being held in unacknowledged detention by the army and police. Relatives were unable to obtain information regarding their whereabouts for several days, sometimes weeks. It is suspected that many of them were being held in army camps without access to their relatives, lawyers or doctors. This is in violation of the Constitution of Nepal which requires anyone arrested to be produced before a judicial authority within 24 hours.

Among those who have "disappeared" are Tanka Prasad Devkota and Badri Bahadur Pandey, teachers at the Jeevan Jyoti Secondary School in Gorkha district. They were arrested on 26 December 2001 by a group of army and police personnel. As of mid-February 2002, their whereabouts remained unknown.

Some of the "disappeared" were seen being arrested by police officers in plain clothes and then taken away in unmarked vehicles with covered number plates. There is strong evidence that those arrested in Kathmandu and other urban centres and suspected by police to be connected to the CPN (Maoist) have been held incommunicado in unofficial places of detention. Such places include the Kathmandu DSP's office in the Hanuman Dhoka police station; the "Anti-Terrorist Unit" in the premises of the National Police Academy in Maharajgunj, Kathmandu; and the Regional Police Training Centres in Kakani near Kathmandu, in Pokhara, Kaski district, in Nepalgunj, Mid-Western Region and in Biratnagar, Eastern Region. Amnesty International has testimony from several people who have been held at these centres but have since been released describing how they were tortured and forced to sign a statement "surrendering" themselves to the police.

The police unit allegedly responsible for these covert operations in urban areas is the "anti-terrorist unit", also referred to as "striking force", a unit functioning under the directorate of operations.

Three men originally from Kashmir, India, who had been living in the Nepalese capital for several years, were reportedly arrested in Kathmandu in 2000 and subsequently "disappeared". They were among at least 11 Kashmiris arrested in Kathmandu at that time, eight of whom were later released. All were arrested by Nepali police in plain clothes. Some sources suspect that Indian police or intelligence agencies were involved in their "disappearance".

[photo caption]

Gulam Mohammed Safi, one of three Kashmiris who were arrested in Kathmandu in 2000 and subsequently “disappeared”.

© Private

[end caption]

One of the “disappeared” Kashmiris, Gulam Mohammed Safi, had run a shop in central Kathmandu for approximately 20 years. He was reportedly arrested on 16 August 2000 by five armed police officers in plain clothes, two of whose names are known to Amnesty International. The arrest took place at a house in Bhaktapur where Gulam Mohammed Safi had gone to attend a festival. The police also took into custody the Nepali couple hosting the festival. Earlier that day police had arrested Wazir Ahmed Safi, the nephew of Gulam Mohammed Safi, and asked him to direct them to the house in Bhaktapur. All were transported in the same police van. The nephew was taken to the Singha Durbar Ward police post; the Nepali couple to New Road police post. When the police took the Nepali couple out of the van, Gulam Mohammed Safi was still inside. That was the last time he was seen. The nephew was released after 10 days' detention; the friend after one day and his wife after seven days. Family members made numerous inquiries to the police, government authorities and Indian embassy officials, but the whereabouts of Gulam Mohammed Safi remain unknown.

Other Kashmiris who were arrested around the same time and have been released say that they saw Gulam Mohammed Safi while they were held at a secret place of detention. One of them reportedly claimed that Gulam Mohammed Safi showed signs of having been severely beaten. Some observers suspect that Gulam Mohammed Safi may have been handed over to the Indian authorities for questioning in connection with activities of Kashmiri militants. When Kantipur newspaper reported on these “disappearances” on 10 September 2000, the editor reportedly received an unsigned letter from police headquarters stating that “no Kashmiris had ‘disappeared’”. In a similar letter to the Press Council, it was reportedly stated that no officials from the Indian police had been called to undertake interrogation.

The two other “disappeared” Kashmiris, Mohammad Shafi Rah, aged 32, and his brother, Mushtaq Ahmed Rah, aged 26, who were both reportedly arrested on 27 August 2000, were finally traced at Jodhpur jail, India in mid-February 2002.

Many of the people reported “disappeared” from rural areas in the context of the “people's war” are suspected by relatives to have been killed while being taken by foot from their place of arrest to the police station, and their bodies disposed of in a ravine or river. When relatives have made inquiries, police have denied that the people in question were ever arrested, despite evidence by witnesses to the contrary.

Government officials have repeatedly denied that police have been responsible for “disappearances”. They maintain that those said to have been arrested were Maoists who had gone underground or left the country or had been killed by the Maoists for indiscipline. However, when representatives of human rights organizations met the then Prime Minister in early 2000 to inquire about seven people who “disappeared” after they were arrested in Kathmandu in May 1999, he told them that “they are already dead”. In March 2001 the Deputy Prime Minister and Minister of Home Affairs published a list of 282 people in custody for their involvement in “terrorist activities” and 12 others said to have been held in “solitary confinement”.<sup>24</sup> Among the 12 were suspected Maoists, three of whom had been reported “disappeared” for several months. The official acknowledgement that people were held in solitary confinement, clearly in violation of the Constitution of Nepal, was in itself remarkable.<sup>25</sup>

Two cases of people who “disappeared” but were later released demonstrate the possible fate of many others who have been reported as “disappeared”. Suresh Ale Magar, a lecturer at Kathmandu University and leader of the All Nepal Intellectuals' Association (Revolutionary), and Pawan Shrestha, an engineer, who were both active in demanding rights for ethnic minorities, were rearrested on 23

December 1999 soon after the Supreme Court had ordered their release. Witnesses saw them being put into a police van outside Central Jail, Kathmandu and for the next two months their whereabouts remained unknown. In fact, they were held in unacknowledged detention until 26 February 2000, when they were released.

One of them told Amnesty International that they had initially been taken to the Hanuman Dhoka police station in central Kathmandu. They had not, however, been taken to the room where those arrested normally have their details recorded. Instead, they were taken into another room and their details were taken down in a separate register. The next morning, they were taken to Police Headquarters in Naxal, Kathmandu, and held in a “quarterguard's room” containing guns and ammunition. They remained there until around 6pm. Then they were taken in a police van accompanied by 10 policemen. At around 10.30pm the van stopped in what appeared to be a police barracks. Again, they were put in a “quarterguard's room”, where they remained confined for 65 days apart from toilet visits. They were not interrogated and were never told of any charges or shown any court document or charge sheet. At no stage were they permitted any kind of contact with their family, lawyer or a doctor.

After 25 days in the room, the commanding officer of the police battalion asked Suresh Ale Magar and Pawan Shrestha to write a statement about their activities on behalf of ethnic minorities and about their relationship with the CPN (Maoist). They did so. They stated that they were not associated with the CPN (Maoist) and that they condemned the “people's war” and were prepared to resign from the organizations campaigning for ethnic minorities. Another senior police officer asked them to make statements. On one occasion, a senior police officer who had come to inspect the “quarterguard's room” seemed surprised to find them there and promised to look into the case.

On 25 February 2000 a DSP came to the room with papers – one blank, the other printed. The two men were asked whether they agreed with the content of the printed paper. The content was similar to their earlier statement, although some of the language had been changed. When they agreed to sign the statement, they were asked to rewrite it in their own handwriting. That same evening, an inspector came and asked them to write another statement, the content to be the same as the previous one but with the date coinciding with the time they had been held in Kathmandu Central Jail prior to their “disappearance”. They agreed.

The next day, they were taken to the local airport and put on an aeroplane to Kathmandu without police escort. They were warned not to reveal any information about where they had been held during the 65 days; they were told to say that they “had been somewhere on their own”. It later became clear that they had been held at the Western Region Police Training Centre in Pokhara, Kaski district.

Bishnu Pukar Shrestha, a secondary school teacher, “disappeared” after his arrest by police on 2 September 1999 in Kathmandu. He was 42 at the time and married with three children. Originally from Dhading district, he moved to Kathmandu in 1997 to teach at Mangal Secondary School. From 1992 to 1996 he was General Secretary of the Nepal National Teachers' Association. He is also a qualified lawyer and a member of the Nepal Bar Association. A central committee member of the People's Rights Concern Movement, a national human rights organization, he has taken part in fact-finding missions to investigate reports of human rights violations in the context of the “people's war” in Mid-Western Region. He had spoken out against the increasing number of “disappearances” in Kathmandu and other districts.

On the day of his arrest, he was forced into a Maruti Gypsy jeep with black tinted windows. Those who abducted him were suspected of being police officers in plain clothes. One of the witnesses tried to follow the jeep on his motorbike but lost contact near the Balambur police post. The jeep at that time was heading towards the centre of Kathmandu.

Local people heard him shout “my name is Bishnu Pukar Shrestha, please inform the police post”. They contacted the local police at Satumangal but police officers there took no action. When relatives made inquiries at other police posts in the area and at police headquarters, the police denied that he had been taken into custody.

His whereabouts remained unknown for 10 months. He was finally released on 6 or 7 July 2000 after sustained pressure was put on the authorities, including from members of parliament, the diplomatic community and local and international human rights organizations.

The police deny that he had been in their custody, but reliable reports indicate that for most of the 10 months he was held incommunicado by the “Anti-Terrorist Unit” within the premises of the National Police Academy at Maharajgunj, Kathmandu – a secret place of detention. For a period he was able to pass information secretly to his relatives, apparently via a sympathetic police officer, but this communication subsequently stopped. His relatives suspected that he had been transferred elsewhere or killed.

[photo caption]

Bishnu Pukar Shrestha, a secondary school teacher, whose whereabouts remained unknown for 10 months following his arrest by police on 2 September 1999.

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[end caption]

Bishnu Pukar Shrestha was tortured during interrogation, including by being tied to a chair, laid on the ground and subjected to falanga (beatings on the soles of the feet). According to a report in Kantipur newspaper, he was released in the presence of a member of parliament.

Bishnu Pukar Shrestha never appeared before a court despite constitutional provisions that detainees must appear before a judicial authority within 24 hours of their arrest. One reason he was held for so long appears to be that he refused to sign a statement admitting that he was a member of the CPN (Maoist) and promising to “surrender” to the police.

“Disappearances” are not a new phenomenon in Nepal. Several “disappearances” were reported in mid-1985 in the context of a civil disobedience campaign against the government and a series of bomb explosions in the capital. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) retains four unclarified cases from that period.<sup>26</sup> In at least two of these cases, there were credible reports that detainees had been held within the premises of the Maharajgunj Police Training Centre (now the National Police Academy) in Kathmandu, the same place where Bishnu Pukar Shrestha was held.

The use of unofficial places of detention was confirmed in some of the cases of “disappearances” of the mid-1980s described in the report of an official commission of inquiry set up in July 1990. The modus operandi currently used by the police as described above (the use of unmarked vehicles with covered number plates, by police officers in plain clothes, the use of unofficial places of detention and the practice of incommunicado detention) is similar to that used in the mid-1980s. No action was ever taken on the commission's findings.

Clarifying the fate or whereabouts of the “disappeared” gained political significance in October 2000 when the Maoist leadership put this forward as a condition for entering into dialogue with the government. A list of 73 people who had “disappeared” was submitted by the Maoists to the government at the time.

One of the people listed was Dinesh Sharma, a Maoist leader who had “disappeared” after he was arrested on 4 December 1999 and whose detention the authorities had denied. In October 2000 he and another member of the CPN (Maoist), Dinanath Gautam, were released by the government,

apparently to create an atmosphere for talks with the CPN (Maoist). However, Dinesh Sharma was later taken to a press conference by police and allegedly forced to denounce the CPN (Maoist). As a result, the prospects for talks worsened.

On 6 March 2001 the government published a list of 294 names of detainees being held on charges associated with their activities as members or sympathizers of the CPN (Maoist). The publication of the list was said by the government to be a response to the demand of the Maoist leadership for clarification of the fate of the 73 named “disappeared”. However, the leadership of the CPN (Maoist) said that the government was not sincere as the list of 294 contained only three of the 73 people they had listed and that the whereabouts of the other 291 prisoners had been known to their relatives anyway.

At the time of writing “disappearances” were still being reported. For example, Janak Prasad Adhikari, an accountant originally from Nuwakot district, Central Region, who worked at the Irrigation Department, in Lalitpur, Kathmandu, telephoned his family from his office at 1.30pm on 1 January 2002, but failed to return home after the office closed. On 2 January police officers reportedly searched his home and took away citizenship cards, books and other documents belonging to the family.

The NHRC and the ICRC were approached by the family about the alleged arrest of Janak Prasad Adhikari. According to reports, when representatives of the NHRC asked the authorities about his case, they were told that he had not been arrested and that security forces personnel were “looking for him”. His whereabouts were unknown as of mid-February 2002, but unofficial sources claimed he was held by the army at an undisclosed location.

#### Legal framework

Habeas corpus petitions have been filed in the Supreme Court by many of the relatives of people who “disappeared” after arrest by the police, but they have been ineffective in establishing the whereabouts of those missing. Since the declaration of the state of emergency, despite the large number of people arrested, to Amnesty International's knowledge only very few habeas corpus petitions have been filed. Lawyers are apparently afraid of being arrested under the TADO for “supporting terrorism” if they appear on behalf of people arrested under the Ordinance.

In response to writs of habeas corpus filed before the declaration of the state of emergency, the authorities at various levels repeatedly denied the arrest. The Supreme Court allows the relatives of the “disappeared” to produce evidence that they were in custody. For instance, in Bishnu Pukar Shrestha's case (see above), at Supreme Court hearings nine witnesses gave testimony about his arrest. The court also ordered the Transport Department to reveal the details of the registered owner of the jeep in which Bishnu Pukar Shrestha had been abducted. At another hearing, the court ordered the jeep's registered owner to attend the next court hearing. Despite this, 10 months after Bishnu Pukar Shrestha's arrest, the habeas corpus petition had not succeeded in establishing his whereabouts. To Amnesty International's knowledge, no action was taken against the officers allegedly responsible for illegally arresting and detaining Bishnu Pukar Shrestha; torturing him and making him “disappear”.

In relation to “disappearances” the Supreme Court has the power to order an inquiry by an officer of the court. To Amnesty International's knowledge, it has done so only once – in the case of Rajendra Dhakal, a lawyer from Gorkha who “disappeared” in January 1999 (see above). The case was pending at the time of writing.

There is no legal basis in Nepali law for compensation to be granted in relation to “disappearances”. Amnesty International has called upon the Supreme Court of Nepal to follow the practice elsewhere in South Asia where the courts have ordered damages to be paid to a petitioner as a form of redress by a specified date in cases where it has been proved that someone who has “disappeared” was last seen in the custody of the state. It has also urged the court to forward copies of

procedures to the Attorney General for further investigation with a view to prosecute those responsible for the “disappearance”.

#### Torture and cruel, inhuman or degrading treatment

Bidur Khadka was arrested by police in Kavre district on 30 December 2001, and was reportedly severely tortured at Banepa area police station. His 13-year-old nephew Santosh Karki was arrested on 19 January 2002 and police reportedly threatened him to make him implicate his uncle in a bombing allegedly carried out by members of the CPN (Maoist). Bidur Khadka was reportedly so severely tortured during interrogation that he was unable to walk. Some of the bones in his hands were reportedly broken. Police took him to the Sheer Memorial Hospital in Kavre district for medical treatment five days after his arrest. The hospital asked the police to bring him back for follow-up treatment after seven days, but reportedly police did not do so. A relative of Bidur Khadka's was permitted to see him on around 14 January, but was not allowed to speak to him. The police reportedly gave him some of Bidur Khadka's clothes, which were covered in blood and pus. On 11 February 2002 Bidur Khadka and Santosh Karki were produced in the Special Court in Kathmandu and remanded into custody for 10 days. Santosh Karki was reported to have a swollen face suspected to be a result of torture. At the time of writing, they had not received any further medical attention.

[photo caption]

An Inspector of Police at Attaria police station, Kailali district, putting up "torture free" tape above the custody room, during Amnesty International's Campaign Against Torture in 2000.

© AI Nepal

[end caption]

Indra Lal Gautam, a 53-year-old shopkeeper from Khalanga VDC, Rukum district, was reportedly tortured by police at Rukum District Police Office (DPO) in January 2000 after he was arrested on suspicion of possession of arms. He was taken to the inspector's office, where his clothes were removed. He was beaten with nettles and punched in the face, causing a nosebleed and breaking a tooth. He was also beaten on the soles of his feet and all over his body. The torture continued from 6am to about 8pm, and carried on the next day. At around 3pm on the second day, the DSP reportedly ordered the torture to stop.

Krishna Serala, a 25-year-old student from Mandu VDC, Bajura district, was reportedly arrested at his lodgings in Kailali district in February 2000 and taken to Kailali DPO on suspicion of being a member or sympathizer of the Maoists. The head constable reportedly slapped him, beat him, then made him lie on the ground and jumped on his thighs. On the fifth day of his detention, three police constables hung him upside-down from a pole with a rope around his ankles and subjected him to falanga for about one hour. He was also threatened by having a gun pointed at his chest. After seven days, he was released after local politicians and student leaders went to plead on his behalf. As a result of the torture, he reportedly could not walk properly or bend his legs for several days.

Lal Bahadur Tamang, President of the All Nepal Landless People's Union, Kaski district, was reportedly arrested at around 7pm on 4 April 2000 from his home at Ward No. 9, Pokhara city, reportedly on suspicion of being a member or sympathizer of the CPN (Maoist). On the way to the police station in a jeep, he was allegedly beaten and then taken to a stretch of jungle near the road to Syangja. There, he was reportedly forced to put on clothes normally worn by CPN (Maoist) combatants and made to hold a gun. He was then photographed. He was subsequently taken to the City Ward Police Post at Bagar, Ward No. 1, Pokhara, where he was reportedly verbally abused and beaten on his hands, back and buttocks with sticks and a gun butt by policemen who had their faces half-covered. He was also allegedly given electric shocks to his fingers, forced to urinate on a live electric heater, suspended by his hair and subjected to belana (rolling a weighted bamboo stick or other round object along the prisoner's thighs, resulting in muscle damage) and “wet submarino” (being submerged in water). He lost consciousness.

After members of the All Nepal Landless People's Union protested against his arrest, he was released on 7 April 2000. He was admitted to hospital in Pokhara and taken from there to the Bir Hospital in Kathmandu. When he was returned to Pokhara on 10 April 2000, he was reported to be still unconscious. He continues to suffer dizziness, nausea and headaches.

A 40-year-old businessman from western Nepal was reportedly arrested from his shop in December 2001 by three policemen who took him to the local police station to see the Sub-Inspector. He was questioned regarding the whereabouts of some Maoists whom they said he had been helping. Five other policemen were in the room and started beating him, alleging that he knew everything about the Maoists' movements and that he should tell them everything. According to the victim, he was subjected to torture for about three hours on two consecutive days. He was beaten on the soles of his feet with a rod, after which he was made to jump up and down. He was stripped naked and subjected to belana. He was boxed on his ears and beaten on his back with a flat wooden stick. He was punched and kicked in his head. During his two days in custody he was deprived of food and water for two days and not permitted to see any visitors. He was then released, after being told by the police that they had made a mistake and had confused him with another suspect of the same name.

Bijay Raj Acharya, the owner of a publishing house specializing in children's literature and political works, was arrested from his home in Kathmandu on 9 January 2002, apparently by a team of army and police officers. According to witnesses, a team of army personnel searched his house following his arrest and took away all his books. He was reportedly first taken to Singha Durbar police station in Kathmandu and on the second day transferred to the Balaju army barracks. At the army barracks, Bijay Raj Acharya was reportedly blindfolded and had his hands and legs tied. He was also allegedly subjected to electric shocks.

Chhabilal Adhikari, a teacher at a local primary school in Hansapur VDC, Gorkha district was reportedly tortured by police who arrested him on 20 December 2001. Police reportedly blindfolded him and put him in a trench for a whole night. The next day, during interrogation about the activities of the Maoists in his village, he was whipped on his head and feet, as a result of which he lost consciousness. He was released on bail after 21 days, allegedly while still unconscious. The police reportedly ordered his relatives to sign a document stating he was in good health. Chhabilal Adhikari was admitted to hospital. He was reportedly unable to move his hands and had wounds all over his body, including on his nose and head.

These are only a few examples of numerous cases of torture in the context of the Maoist "people's war" reported to Amnesty International recently. Torture of ordinary criminal suspects held in police custody is also regularly reported.

Sometimes particularly gruesome forms of torture are reported. They include falanga with bamboo sticks, iron or PVC pipes; belana; telephono (simultaneous boxing on the ears); rape; electric shocks; and beatings with nettles. There have also been reports of mock executions and people being buried alive up to their necks in a pit they were forced to dig themselves. Beatings with nettles is often inflicted on women, particularly on their breasts and genitals.

The victims have included children. For example, 13-year-old Deepak Raut was arrested on 30 January 2000 by police in Saptari district with four other children in connection with a theft. They were held for 18 days. All of them were ill-treated or tortured, but Deepak Raut was treated especially badly. Signs of beatings were visible on his body and were confirmed by a doctor. Hopes for an end to torture were high when democracy was restored in Nepal in 1990. Several leading members of the political parties had been victims of torture under the Panchayat system and had pledged their commitment to uphold human rights when they came to power in 1990.

There are many factors that have contributed to the continuation of torture. One is that Nepal has a tradition of torture and humiliation of criminals by police and local authorities.<sup>27</sup> Despite the

political changes over the past 12 years and the general prohibition of torture in the 1990 Constitution, torture has so far not been defined as a crime and is still widely perceived as acceptable.

Other factors include a lack of training among police personnel, a lack of effective investigative mechanisms and the general climate of impunity in relation to human rights violations. In relation to political detainees, a key factor is the wide powers given to the police to detain suspects under the Public Security Act (PSA – see below, Arbitrary detention and unfair trial). In relation to common criminal suspects and people taken into custody in a non-political context, the main contributing factor to the persistence of torture is the police's lack of investigative skills. Police take the “easy” option of beating a confession out of a suspect (not necessarily the culprit), rather than finding evidence that will stand up in court and ultimately result in the conviction of the culprit.

According to Article 9 of the Evidence Act, 1974, confessions made through the use of torture are inadmissible as evidence in court.<sup>28</sup> However, the district courts usually accept a confession as prima facie evidence on the basis of which a person is detained. The courts assume all statements or confessions taken by the police are not extracted by the use of torture unless proven otherwise. In other words, the onus of proof is on the accused who alleges that he or she has been tortured. Such people have to seek to get the confession declared inadmissible as evidence in an administrative ruling by the court during the criminal case proceeding against them. So far, the Supreme Court has not taken a clear stand on whether the burden of proof should be reversed. In fact, in several judgments, the Supreme Court has upheld that the person who alleges torture should produce evidence of torture and prove the confession was extracted by torture.

A practice that contributes to the impunity enjoyed by torturers is that police frequently refuse to allow injured detainees to see a doctor or delay doing so. A senior doctor told Amnesty International that in his experience the average delay for victims of torture to be brought to hospital was seven or eight days, by which time signs of torture are more difficult to ascertain, particularly bruising. The doctor also described several cases where victims had been threatened by police not to complain to the doctor about ill-treatment or torture. In addition, he reported that police often remain present during the prisoner's examination. Some doctors send them away but others are reluctant to do so.<sup>29</sup>

Such practices violate Nepal's obligations under the International Covenant on Civil and Political Rights (ICCPR), to which the country is a party. The Human Rights Committee in its General Comment 20 on Article 7 of the ICCPR has stated that the protection of detainees requires that each person detained be afforded prompt and regular access to doctors. The practices also contravene Nepali law: the Torture Compensation Act (TCA – see above) requires that prisoners be “checked up on his physical condition by a doctor in government service, if possible”.

## Rape

In June 2001 a 14-year-old girl from Sarlahi district was reportedly raped at Ward No. 3, Pattharkot VDC. The police officer allegedly responsible was transferred from the area, but no other action was taken against him.

Rape and attempted rape by police has been regularly reported. Given the cultural and religious context in which rape victims can face social ostracism and shame, it is likely that many cases of rape are not reported. Moreover, the climate of impunity means victims may believe that little or no action will be taken against the perpetrators if they report the crime. To Amnesty International's knowledge, to date only one police officer has been found guilty of rape: an assistant sub-inspector attached to the District Police Office in Sindhuli district was sentenced in February 2001 to four years' imprisonment for raping an 18-year-old woman. The court also ordered that half his property be transferred to the victim.

Rape, unlike torture, is defined as a crime in Nepali law. Under Section 3 of the Muluki Ain (National Legal Code), rape of a girl of 14 or below is punishable by between six and 10 years' imprisonment. Rape of a woman above 14 years old is punishable by between three and five years' imprisonment. Under Section 5 (Miscellaneous), rape in custody by a government servant, including police, is punishable by an additional year's imprisonment over and above the maximum punishments specified in Section 3.

During the "security mobilization operation" that began in May 1998, there were many reports of rape in custody by police, particularly in Rolpa and Rukum districts. The Human Rights Yearbook 2001 of Informal Sector Service Centre, an NGO, reported that there had been three reports of rape and eight reports of attempted rape in 2000.

[photo caption]

Body of Suk Bahadur Lama, a 21-year-old man from Dolakha district, who died as a result of torture in police custody in Nawalparasi district in August 1999.

© With permission from human rights activists in Nepal

[end caption]

### Deaths in custody

Some victims of torture in police custody have died apparently as a result of their treatment. Others have been shot dead at police posts or stations. For example, Satya Dev Devkota, a 26-year-old man from Ward No. 1, Darmakot, Salyan district, who was arrested on 23 February 2000, was reportedly shot dead by police inside the Pharula police post and his body buried in the toilet. However, most people who have died in police custody have been killed on the way to the police station or at smaller police posts, rather than at the larger district police offices (see above, Unlawful killings). To Amnesty International's knowledge, not a single police officer suspected of being responsible for a death in custody in the context of the "people's war" has been brought to justice.

In most cases no action is taken against police or army personnel suspected of involvement in the torture or killing of prisoners. One exception involved the case of eight police officers who were arrested and charged with the murder of Suk Bahadur Lama, a 21-year-old man from Dolakha district. He had been arrested on a criminal charge and died as a result of injuries inflicted by torture for six successive days at Kawasoti Ilaka police post, Nawalparasi district in August 1999. A post-mortem found he had multiple burn injuries on both feet, cauterized abrasions on the upper back, and contusions on the body, legs and soles of the feet. The eight police officers were released on condition of appearing in court when required, pending the commencement of their trial. According to a letter from the government to Amnesty International, a three-member committee coordinated by the Joint Secretary of the Ministry of Home Affairs investigated his death and recommended departmental action against the police personnel involved in the "heavy handed treatment" [sic] of Suk Bahadur Lama. The family was given Rs50,000 (about \$654) financial assistance by the government – the first time ever that the government has provided such assistance. On 6 November 2001 all police officers charged with his murder were acquitted by the Nawalparasi court.

### Legal background

In 1990 Nepal ratified the UN Convention against Torture. However, many provisions of the Convention have not been implemented. Most notably, there are no legal provisions in the country's laws which make torture a crime. Amnesty International believes that introducing such penal provision would be an important step towards ending the current impunity for torturers.

In a response of 21 March 2001 to an Amnesty International appeal to make torture a crime in Nepal, the office of the Inspector General of Police responded as follows:

“[The] present leadership of [the] Nepal Police is very concerned with issues of protecting and respecting human rights and the rights of the victim. [The] Nepal Police is committed to prevent... torture and would appreciate any recommendations made in discouraging such practice.

“We believe that making people aware of it and educating and training the police officers in that line is more important in addressing this problem than introducing stern punitive measures. Thank you very much for your communication.”

The implementation of the TCA, the law passed in 1996 which provides that victims of torture or relatives of people who died in custody as a result of torture can apply for compensation to the local district courts, has not been without problems. For example, a complaint was filed under the TCA on behalf of 13-year-old torture victim Deepak Raut (see above). Soon after, on 26 May 2000, he was arrested in an apparent attempt to intimidate him into withdrawing the case. A lawyer intervened and Deepak Raut was released. The case under the TCA is pending.

In April 1994 Nepal appeared for the first time before the Committee against Torture, the international body of experts monitoring the implementation of the Convention against Torture. The government's initial (two-page) report of September 1993 on the implementation of the provisions of the Convention against Torture was described by the Committee as “in many respects incomplete”.<sup>30</sup> It was supplemented at the time of the meeting by a six-page statement and a 10-page background note. The Committee recommended that a supplementary report be submitted within 12 months. To Amnesty International's knowledge, no such report has been submitted in the nearly eight years since the Committee asked for it. Nepal's second report, which had been due to be submitted by June 1996, has to date not been submitted to the Committee either.<sup>31</sup>

The Committee had recommended that Nepal enact legislation incorporating the definition of torture as contained in the Convention against Torture as soon as possible. It is regrettable that to date this recommendation has not been implemented.

#### Arbitrary detention and unfair trial

As of February 2002, a total of more than 11,000 people were estimated to have been arrested for alleged involvement with the “people's war”. The total number of political prisoners in custody as of mid-February 2002 was estimated to be around 2,500.

Nepal's Constitution of 1990 contains a number of welcome safeguards against arbitrary arrest and detention. However, arrests have continued to be carried out under laws which are largely remnants from the Panchayat era, such as the Sarvajanic Suraksha Ain, Public Security Act (PSA) and the Rajya Biruddha Apradh Ra Sayaja Ain, Anti-State Crimes and Penalties Act (ASCPA). Several provisions in these laws are in clear breach of the Constitution as well as international treaties, such as the ICCPR, to which Nepal is a party. Since November 2001, most arrests have been carried out under the newly-promulgated TADO, several provisions of which also are in breach of international standards.

[photo caption]

Chief District Officer, Prakash Man Pokhrel, talking to detainees suspected of Maoist activities, in Rolpa district jail, on 24 February 2001.

© Shova Gautam

[end caption]

Before the promulgation of the TADO, successive governments had repeatedly attempted to widen the powers of the police and CDOs to arrest and detain, rather than amend the PSA and ASCPA to bring them in line with Nepal's treaty obligations. One of the apparent main aims of these initiatives had been to increase the maximum penalties for certain offences and thus prevent the release of

suspects on bail pending trial. Nepal's current legislation provides that suspects can be released on bail if they have been arrested in relation to offences that carry a maximum penalty of three years' imprisonment or less.

CDOs have the power to sentence people to prison terms under laws such as the Local Administration Act, 1971 (maximum penalty of three months) and the Arms and Ammunition Act, 1963 (maximum penalty of seven years). They also have been given powers to issue preventive detention orders under the PSA and the TADO and to detain people for up to 25 days pending trial under the Some Public Offences and Penalties Act, 1970. Charges under the Arms and Ammunition Act, 1963 in particular have been very common and CDOs have regularly sentenced suspected members of the CPN (Maoist) to up to two years' imprisonment for the manufacture, repair, possession, sale or supply of arms.

The authority given to CDOs to sentence people is a violation of the right to fair trial as guaranteed under Article 14 of the ICCPR, particularly the right to trial by a competent, independent and impartial tribunal. CDOs are appointed civil servants and do not have security of tenure. Their independence is therefore highly questionable. In addition, those tried before CDOs generally do not have the assistance of a lawyer nor are the proceedings conducted in public. Furthermore, they are given little time to prepare their defence. They have a right to appeal to the Appellate Court, but this can take several months, pending which they usually remain in prison.

The Human Rights Committee, at the time it examined Nepal's initial report under the ICCPR in 1994, recommended that "necessary measures be taken... to give effect to the separation of executive and judicial functions".<sup>32</sup> To date, this recommendation has not been implemented. On the contrary, there have been many attempts to extend the judicial powers of CDOs, including two in 1997 (by Prime Minister Sher Bahadur Deuba and then by Prime Minister Lokendra Bahadur Chand) and one in 1998 (by Prime Minister Girija Prasad Koirala). In September 1999 the government of Prime Minister Krishna Prasad Bhattarai introduced a bill, the Amendment of Some Nepali Laws relating to the Internal Administration, which proposed to extend the powers of CDOs to sentence people arrested under the Local Administration Act with up to six years' imprisonment for non-violent offences such as writing or affixing posters or leaflets or participating in a meeting of five or more people. Amid vociferous opposition from human rights groups, none of these bills was passed in parliament.

## The Constitution

Article 14 (5) of the 1990 Constitution provides that, "No person shall be detained in custody without being informed at the earliest of the grounds for arrest, nor shall he be denied the right to consult or be defended by a legal practitioner of his choice". Article 14.6 further stipulates that detainees shall be produced before a judicial authority within 24 hours of arrest. However, these provisions are often ignored. Particularly, the fact that CDOs can in the first instance issue detention orders under the PSA and TADO and then act as the judicial authority before whom that same person is produced is a clear breach of the separation of executive and judicial functions.

Moreover, the provision under Article 15 that "no person shall be kept under preventive detention without sufficient ground of existence of threat to the sovereignty, tranquility, indivisibility or public peace and order of the Kingdom of Nepal" is broadly worded and has failed to prevent arbitrary arrest and detention.

The wording of Article 14 (5) makes the presence of a lawyer during police custody legally possible but not compulsory. In practice, lawyers may intervene only after the case has been registered at the court office, and this excludes them de facto for the first 24 hours of custody. Moreover, the assistance of a lawyer is not compulsory at any stage of trial proceedings.

The UN Working Group on Arbitrary Detention, in a report of its visit to Nepal in April 1996, recommended that the government take measures to ensure effective provision for counsel to be present from the very first hours of custody.

### State of emergency

When the state of emergency was declared on 26 November 2001, the government also announced the suspension throughout the country of sub-clauses (a), (b) and (d) of clause (2) of Article 12, clause (1) of Article 13 and Articles 15, 16, 17, 22 and 23 of the Constitution of Nepal. Amnesty International is concerned that the suspension of these rights – the rights to freedom of thought and expression, assembly and movement, the right not to be held in preventive detention without sufficient ground, the rights to information, property, privacy and constitutional remedy – throughout the whole country goes well beyond what may be considered to be “strictly required by the exigencies of the situation” as required in Article 4 of the ICCPR and therefore might be regarded by the Human Rights Committee to be in violation of Nepal's obligations under this treaty.

The suspension of Article 23 of the Constitution, which denies people access to judicial remedy (apart from habeas corpus), is of particularly grave concern. It prevents, for instance, any judicial scrutiny of the declaration of the state of emergency and the promulgation of the TADO. In Amnesty International's view, this is contrary to the provisions of Article 2 (3) of the ICCPR.<sup>33</sup> In its General Comment on Article 4 issued on 24 July 2001, the Human Rights Committee specified that Article 2(3) requires a state party to the Covenant to provide remedies for any violation of the provisions of the Covenant. It also confirmed that, even under a state of emergency, the obligation to provide an effective remedy remains.

At the time of writing, the government had not issued any specific orders to regulate the imposition of the state of emergency as provided for in Article 115(7) of the Constitution. Such orders are applicable in law as long as the state of emergency is in force.<sup>34</sup>

### The Public Security Act

The PSA, which has been widely used to detain people suspected by the government of involvement with or membership of the CPN (Maoist) prior to the promulgation of the TADO, is problematic both in law and practice. The PSA and its rules allow for people to be held in preventive detention for up to 90 days on the orders of a local authority, which is normally a CDO, to “maintain the sovereignty, integrity or public tranquility and order” of the country. This period can be extended to six months with the endorsement of the Home Ministry. A further extension of up to 12 months from the original date of issue can be obtained subject to the approval of an Advisory Board established under the Act.

[box]

“Administrative” or “preventive” detention refers to measures under which people suspected of posing a threat to public order or state security are detained by order of state authorities which do not intend to prosecute the detainees with criminal offences.

Amnesty International believes that states should not detain anyone unless they are to be charged with recognizably criminal offences promptly and tried within a reasonable period in proceedings that meet international standards for fair trial. The rules of evidence and standards of proof in the criminal justice system have been prescribed in order to minimize the risk of innocent individuals being convicted and punished. It is unacceptable for governments to circumvent these safeguards and Amnesty International believes that it is a violation of fundamental human rights for states to detain people whom they do not intend to prosecute.

“Administrative” or “preventive detention” is not explicitly prohibited by international human rights standards when strictly required during times of national emergency, but even at such times human rights standards applicable to people in detention apply. For instance, the obligation not to

detain arbitrarily and to allow effective judicial supervision have explicitly been ruled to apply to “preventive detention” by the Human Rights Committee in its General Comment 8, 30 July 1992.  
[end box]

In addition to these wide powers given to police and CDOs to arrest and detain, the Ministry of Home Affairs is designated in the Act as the authority to which detainees can appeal in the first instance. Few detainees use this procedure. Instead, they file habeas corpus petitions in the Appellate Courts or the Supreme Court. However, owing to lack of access to legal counsel in the early stages of their detention, detainees find it difficult to file such petitions. In addition, police repeatedly disregard court orders for the release of detainees and rearrest them immediately upon their release by the court. The police's blatant disregard for the authority and independence of the judiciary is a particularly disturbing aspect of the current human rights situation in Nepal.

Article 11 of the PSA stipulates that no order issued under the Act can be questioned in any court of law. Amnesty International understands that judges have generally interpreted this to mean that their jurisdiction extends only to determining whether the application of the detention order was procedurally correct, such as whether written notification was served on the detainee. The courts do not appear to examine whether a detention is strictly necessary under the provisions of the law invoked.<sup>35</sup>

Scores of political activists suspected of being members or sympathizers of the CPN (Maoist) or its front organizations have been repeatedly arrested and detained under the PSA despite court orders for their release. For example, Suresh Ale Magar, a university lecturer (see above, “Disappearances”), whose lawyers had filed habeas corpus petitions on his behalf with the Supreme Court, was rearrested on no less than four occasions between 31 March 1999 and 23 December 1999 after the Supreme Court had ordered his release. Each time, the detention order was signed by a CDO from a different district. The authorities were clearly using a loophole in the law to keep him in preventive detention despite court orders for his release. The loophole allows different CDOs to issue new detention orders on a person without taking into account that previous detention orders have been issued or indeed that the Supreme Court or other courts have ruled that they were unfounded.

Among those detained for long periods under the PSA have been journalists suspected of being sympathetic to the Maoists. Krishna Sen, editor of Janadesh Weekly, spent nearly two years in prison. He was first arrested in April 1999 after the newspaper published an interview with one of the leaders of the Maoist movement, Dr Baburam Bhattarai. Krishna Sen was initially held in Bhadracol jail, Kathmandu. After the Supreme Court ordered his release in August 1999, police rearrested him and took him to Siraha district jail. He was later transferred to Rajbiraj jail in the neighbouring Saptari district. On 8 March 2001 a full bench of the Supreme Court, including the Chief Justice, again ordered the release of Krishna Sen. The jail authorities released him on 10 March 2001 after they received notice of the Supreme Court order. However, he was rearrested under the PSA soon after and “disappeared” for several days. Finally, on 15 March 2001 he was released from Jaleswor jail, Mahottari district.

The experiences of Kalpana Subedi, a 40-year-old woman from Sindhuli district, show how the authorities circumvent the provisions in the PSA to detain people beyond the maximum possible length of 12 months as set out in the law. She was served with five detention orders under the PSA between September 1998 and March 2001, each of which was extended for 90 days with the endorsement of the Home Ministry. As a result, she spent more than two and a half years almost continuously in preventive detention. The detention orders were issued by the CDOs of Sindhuli, Parsa, Rautahat, Makwanpur and Kaski districts respectively. On three occasions, her rearrest took place at the gate of the district court, immediately after the court had ordered her release. Her whereabouts were also unknown for long stretches of time.

On each occasion the authorities presented the new detention order as unrelated to the previous one. This way, they also prevented the further extension of detention orders (beyond six months)

having to be considered by the Advisory Board established under the PSA. The Advisory Board, according to Section 7 of the PSA, should consist of an incumbent and two other incumbent or retired judges of the Supreme Court. Amnesty International has not been able to ascertain whether such an Advisory Board has been set up and, if so, whether the Ministry of Home Affairs has sought its recommendations in relation to extensions of detention orders beyond six months.

The introduction of the Public Security Rules, 2001 in June 2001 presented a further threat to the rights of people detained under the PSA, specifying the grounds on which detention orders under the PSA can be issued. The new grounds increased the risk of arbitrary arrest and detention. The previous rules, which dated back to 1963, contained a number of procedural safeguards, several of which were removed in June 2001. For instance, the old rules specified that a copy of a detention order had to be handed to the detainee within 24 hours of it being issued. The new rules did not contain a time limit. The old rules specified that the Ministry of Home Affairs had to be informed within 48 hours if a detention order had been issued. The new rules did not specify a time limit. In addition, the 2001 Rules contained widely and vaguely formulated reasons for preventive detention under the PSA, such as “the interest of the common people”, and appeared to further facilitate abuse of the PSA. The 2001 Rules were rescinded as a goodwill measure during the talks of late 2001.

#### The Anti-State Crimes and Penalties Act

The ASCPA was passed in 1989. It replaced the Treason (Crimes and Punishment) Act of 1963. In 2000 and early 2001, it was frequently used apparently in an attempt by police to prevent suspects' release on bail pending trial. As stated above, people arrested in connection with a crime for which the maximum penalty is less than three years can be released on bail. Under the ASCPA, people can be sentenced to long prison terms for crimes such as insurrection and treason, which carry punishments of up to life imprisonment. After the promulgation of the Special Court Ordinance in December 2000, cases filed under the ASCPA started to be tried under the Special Court Act, 1974. Under the Special Court Act, police cannot take statements from suspects without a special representative of the Special Court being present.

[photo caption]

Kalpna Subedi, a 40-year-old woman from Sindhuli district, was served with five detention orders under the Public Security Act between September 1998 and March 2001.

© Private

[end caption]

The ASCPA has regularly been used by police to arrest and charge members of Maoist front organizations, including many women. For example, Geeta Shahi, the 23-year-old chairwoman of the All Nepal Women's Organization (Revolutionary) in Tanahun district, was arrested on 31 October 2000 by plainclothes police. The police denied she was in their custody for nearly two weeks. When an Amnesty International delegation visited her after she was traced at Damauli police station, she said that she had been held in handcuffs in the DSP's private quarters in the compound of the police station until 11 November 2000. The custody records showed that Geeta Shahi's date of arrest was recorded as 10 November 2000 – the day after Amnesty International's Secretary General had raised concern about her safety. At the time the delegates met her, on 21 November 2000, she had still not been able to consult a lawyer.

Sixteen-year-old Shova Thapa from Lamjung district was held in secret detention for five days in November 2000 before being given access to her mother and a lawyer. The DSP admitted to an Amnesty International delegation that he had deliberately denied that she was in custody “to teach the lawyers and people a lesson”. The lawyer, although subsequently allowed to see Shova Thapa, was not allowed to consult her.

Both Geeta Shahi and Shova Thapa were subsequently charged under the ASCPA. Both were among those prisoners released by the government in late 2001 as a goodwill measure in the context of the talks. Amnesty International was not able to establish whether they were rearrested after the conflict resumed in November 2001.

The arrest under the ASCPA on 6 June 2001 of Yubaraj Ghimirey, editor-in-chief of Kantipur, the main Nepali daily newspaper, and Binod Raj Gyawali and Kailash Sirohiya, the newspaper's director and managing director respectively, was seen as a warning to the media to refrain from commenting adversely in the aftermath of the royal massacre. Their arrests were connected to the publication in Kantipur of an opinion piece by Dr Baburam Bhattarai, a Maoist leader, in which he accused India and the USA of being behind the royal massacre and urged army personnel not to support the new King. Amid widespread protests, they were released on bail on 15 June. The case against them was subsequently withdrawn.

#### The Terrorism and Disruptive Activities (Control and Punishment) Ordinance

Most of the people arrested in connection with the conflict after its resumption in November 2001 have been arrested under the TADO promulgated at the time. The Ordinance uses vague definitions of "terrorist" and "accomplice" which includes "any individual who is in contact with or involved with the person involved in terrorist and disruptive activities" and "any person who directly or indirectly supports financially and by any other means a person or group involved in terrorist and disruptive activities". Several of these terms may indicate activities which do not involve any encouragement to commit violent or criminal acts. On the contrary, it might include the peaceful, private discussion of political ideas. This wording could thus apparently lead to violations of the right to freedom of expression established in Article 19 of the ICCPR.

Section 9 of the TADO permits CDOs and gazetted officers to issue an order "to keep a person in preventive detention at a particular place if there is reasonable ground to believe that somebody should be stopped from committing such acts that could amount to terrorist or disruptive acts". Under such detention orders these people can be held in detention for up to 90 days. This period can be extended to 180 days with the endorsement of the Home Ministry. It is unclear which procedural safeguards, if any, apply to this process to prevent such detention from becoming arbitrary, or facilitating ill-treatment.

In the two months after the promulgation of the TADO, according to government figures, more than 5,000 people were arrested under it; 2,800 of them were released after several days or weeks in custody. Approximately 1,200 people were reportedly held in preventive detention under Section 9 and about 1,000 were being held on suspicion of involvement in "terrorist and disruptive crimes".

People arrested under the TADO, like those arrested under the ASCPA, are to be tried under the Special Court Act, 1974. As of late January 2002, only one Special Court had been constituted in Kathmandu. There were major concerns about the delay in bringing people to trial.

#### Chapter 4: Abuses by the Maoists

Bishnu Prasad Jamar Kattel, treasurer of the NC in Tanahun district, worked on a government-sponsored program aimed at eradicating poverty. He was travelling on a bus on 10 April 2001 when a group of about seven Maoists boarded and dragged him off. They beat him severely and then shot him in the chest, arms and thighs. He died in hospital.

Such targeted and deliberate killings of civilians considered to be "enemies of the revolution", including suspected informants, have been among a wide range of human rights abuses carried out by the CPN (Maoist) alongside their armed operations against the police, army and socio-economic targets

in the context of the “people's war”. Many of those killed have been supporters or members of the NC, although victims have also included members of the CPN (UML) and the Rastriya Prajatranta Party (RPP), National Democratic Party.

Other human rights abuses by the Maoists have included execution-style killings of police officers who were wounded or taken prisoner or who had surrendered; torture; the imposition of cruel, inhuman and degrading punishments, including “death sentences”; hostage-taking; and the recruitment of children as combatants.

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Some parties in Nepal have argued that the “people's war” should be formally declared by the government as an “internal armed conflict”. Amnesty International does not take a position on whether or not the situation in Nepal should be declared an “internal armed conflict”. It calls upon armed political groups to observe the minimum humane standards in all situations where law enforcement personnel and an entity opposing them undertake military-style activities on a regular and consistent basis. These principles are contained primarily in Article 3, common to the four Geneva Conventions of 1949, and should be upheld by the police, army and members of the CPN (Maoist).

Amnesty International calls upon the CPN (Maoist) to at all times:

- respect civilians
- prohibit murder, mutilation and torture
- prohibit reprisals and summary executions
- prohibit the taking of hostages
- protect and care for the wounded.

[end box]

#### Deliberate and unlawful killings

Since declaring the “people's war”, members of the CPN (Maoist) have killed scores of members of other political parties, particularly the NC. The Maoists have stated that these civilians have been killed because of their involvement in specific acts such as corruption or collaborating with the police, rather than on the basis of their membership of any political party. Some victims have been killed after they were warned to refrain from certain activities; others have been killed without apparent reason. In many cases, the Maoists have explained killings in statements published in local newspapers or distributed via pamphlets. According to government statistics, as of February 2002, 448 civilians were reported to have been killed by the Maoists.

Teachers and politicians have been among those most frequently targeted. Muktinath Adhikari was reportedly abducted by Maoists on 16 January 2002 while teaching at the Pandini Sanskrit Secondary school at Duradanda, Lamjung district. A group of four Maoists tied his hands behind his back, and took him about 200 metres from the school. There he was tied to a tree and shot in the head. He died on the spot. Muktinath Adhikari was convenor of Amnesty International's local group in Lamjung district and was acting headmaster of the school. It is suspected that the reason for the killing was Muktinath Adhikari's membership of the Nepal Teachers' Association (NTA) considered close to the NC. According to a communication purportedly from the Maoists to Amnesty International, Muktinath Adhikari was killed because he was “a person with long record of anti-people activities and had proven charges against him of being an informer leading to the killing of a number of innocent people by the royal army in Lamjung”. According to other sources, however, he was killed because he had earlier refused to give “donations” demanded by the Maoists and had received several threats as a result.

Twenty-eight teachers belonging to the NTA have been killed by the Maoists, nine of them after the state of emergency was declared in late November 2001; dozens of others have been maimed.

Shyam Sundar Shrestha, a member of the Central Committee of the Nepal Students Union, affiliated to the NC, was killed on 1 December 1998 on his way to the university campus in Gorkha district. He was first attacked with a khukuri, then shot in the head, throat and stomach. He had not received any threats. After his killing, a newspaper known to be sympathetic to the Maoists commented that Shyam Sundar Shrestha had been killed “because he was against the Maoists”.

[photo caption]

Muktinath Adhikari, who was abducted and killed by the Maoists on 16 January 2002. He was a teacher at the Pandini Sanskrit Secondary School at Duradanda, Lamjung district.

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[end caption]

Krishna Prasad Aryal was one of many people said to have been killed for informing the police about Maoist activities. He was killed on 1 October 1999 while addressing a meeting organized by the Nepal Red Cross at Bakrang, Gorkha district. Four Maoists reportedly came from the back of the crowd, confirmed his identity and then tied up his hands and legs. He was dragged along for some time, then his throat was cut with a khukuri. He died on the spot. Maoists reportedly later claimed that Krishna Prasad Aryal had been killed because he had informed the police about the presence of Harischandra Shrestha and Bipana Nakarmi in Bakrang, where they were killed by police (see Chapter 3). Others said that his killing may also have been related to his social activities as a Red Cross worker or because he had left the Maoists and joined the NC in 1994.

Yadu Gautam, a candidate for the CPN (UML), was killed while canvassing in Garaiela VDC, Rukum district on 5 March 1999 during the parliamentary election campaign. He had been taken captive by the Maoists three times prior to his killing and had reportedly been warned not to “get involved in politics”.

On 22 February 2002, five civilians, including an eight-year-old girl, were burned to death when Maoists stopped a night bus in Chitwan district and set it on fire with the passengers inside, apparently because the bus driver was not adhering to the Maoist bandh declared that day.

There is also clear evidence that police officers who have been wounded or taken prisoner have been deliberately killed by the Maoists. Such killings are in clear violation of minimum humane standards applicable in the “people's war” in Nepal. There have, however, also been several reports that police personnel who have “surrendered” to the Maoists during an attack on their police post have not been harmed.

Eight police officers among 28 who had surrendered to members of the CPN (Maoist) at Toli, Dailekh district, were summarily executed in the early morning of 7 April 2001. Another police officer, Mahesh Dhakal, was killed that day after he had run to his home after being wounded. He was reportedly shot dead while lying wounded in his mother's arms.

Several police officers were killed during an attack on Bhorletar police post, Lamjung district on 27 September 2000. According to eye-witness accounts from villagers and police officers, 12 police surrendered after they ran out of ammunition. Seven of them who were wounded were shot in the chest at close range while lying on the ground and died. Those who were not wounded were tied up and made to lie on the ground. They were questioned, beaten and forced to promise to resign from the police force.

As of February 2002, nearly 1,000 civilians have been injured in attacks by the Maoists, according to government sources. Among them was Gopal Sharma, deputy chairman of Khola VDC, Rukum district. Maoists in July 1998 reportedly threw acid into both of his eyes, blinding him. Many more people have been maimed by the Maoists since the resumption of the conflict in November 2001. Others have been subjected to degrading treatment. Among them was Sobita Neupane, a head teacher

from Barbhangyang, Tanahu district. On 18 January 2002 a group of Maoists reportedly took her out of her classroom and cut her hair.

### Torture

Many people taken captive by the Maoists have been tortured. Torture methods reported include severe beatings, kicking, falanga, belana and cuts with knives.

A teacher from Kalikot district, a supporter of the CPN (UML), was abducted three times by Maoists. On one occasion, in September 2000, he was beaten with sticks on his back, legs, thighs and chest and hit in the face. The beatings lasted for more than an hour until he fainted. He was under medical treatment for more than two months suffering from pain in his chest, back and thighs. He subsequently reportedly sold his land and “donated” money to the Maoists.

A young man from Salyan district who had applied for a job in the police force was tortured by 15 members of the CPN (Maoist) in November 2000. They repeatedly asked him why he wanted to join the police instead of their party. They beat and kicked him in a cowshed near his home for about two hours. He was also subjected to falanga and was cut with a khukuri on his hand and arm. His elbow was pierced with the point of the khukuri blade. He fled his village and sought medical treatment in a nearby town. When interviewed by Amnesty International delegates approximately three weeks later, he had no sensation or movement in his fingers and right arm, and remained in fear for his life.

Elected members of local bodies such as the VDCs find themselves caught between the police and the Maoists and are therefore particularly vulnerable to torture. A VDC chairman of Rukum district told Amnesty International how, after the VDC office was looted, police questioned him for five hours and accused him of collaborating with the Maoists. In the past, he had spoken at a meeting organized by the CPN (Maoist) after he was put under pressure to do so, but he had refused to join the movement. On 21 August 2000 he was abducted by Maoists because they suspected him of being a member of the District Security Committee (DSC). Each day he was questioned. When he continued to deny involvement with the DSC, he was hit in the face and threatened with death. On the 12th day he was taken to a river, made to lie on stones and hit on his neck with the blunt side of a khukuri. He was again asked about his involvement with the DSC. Later he was taken to another river where he was given the same treatment. He fainted. In the end, he confessed to his interrogators' accusations, including that he was planning to rape some girls and kill five Maoists. On 13 September 2000 he was told to confess at a public meeting attended by about 600 people. Two days later, he was forced to do the same at his home village. He was then released on condition that he would stop acting as VDC chairman. He has since left the district.

Another member of the CPN (UML), a farmer from Rukum district, was taken captive on 22 August 2000 after injury prevented him assisting with construction work being carried out by the Maoists in his village. He was kicked in the mouth, which chipped one of his teeth, and beaten. He said that the Maoists broke seven sticks while beating him. He was also subjected to belana twice and fainted. He was questioned about “anti-Maoist” activities. The next day, he was again tortured to the extent that he fainted. He heard the Maoists threatening with death two of his friends who had also been abducted and were being questioned on the upper floor of the same house. Out of fear, he confessed to everything. He was allowed to return home after 23 days and forced to state in public that he had not been tortured and had been treated well. He too has since reportedly left his district.

### Hostage-taking

Mukti Prasad Sharma, President of the Pyuthan District Committee of the NC and former member of parliament, was abducted on 22 May 2001 at around 9pm from his home at Tikuri, Bijuwar VDC, Pyuthan district. The next day, Jana Ahwan, a weekly magazine known to be close to the Maoists,

reported that the leadership of the CPN (Maoist) had demanded the release of five of its members in prison or reported as “disappeared” in return for the release of Mukti Prasad Sharma. Mukti Prasad Sharma was allowed to return home on 12 July. The next day, Lokendra Bista, a Maoist who had been imprisoned since 1996, was released. His name had been among the five Maoist prisoners whose release had been demanded.

The abduction of civilians and a large number of police personnel and the linking of their release to certain conditions became common practice in mid-2001.<sup>36</sup> Around half of the abducted civilians, the majority of them politicians, have been allowed to return to their families after all or some of the demands have been met. According to a government statement issued in March 2001, the Maoists abducted 412 people, of whom 255 were released. As of September 2001, 117 civilians and 71 police personnel were reportedly held as hostages by the Maoists.

[photo caption]

Rana Bahadur Singh of Panchakatiya village, Jajarkot district, sitting in front of the remains of his house which was destroyed by the Maoists during an attack on the local police station in May 2000. His wife and two children were killed. © Sudheer Sharma

[end caption]

Often, the conditions imposed have related to the release of Maoist prisoners and have been conveyed to the authorities via the family of the abducted person, the media or local human rights activists. For example, Shyam Nath Kashyap Ghimire, NC District Secretary and District President of the Landless People Problems Resolution Committee, was abducted on 13 November 2000 in Arghakhanchi district. Armed Maoists told his family that they wanted the release of Thakur Nepal and another Maoist prisoner in return for Shyam Nath Kashyap Ghimire's return home. From captivity Shyam Nath Kashyap Ghimire sent letters to the district administration, police and NC party officials repeating this demand and stressing that “his life would be at risk” if the Maoist prisoners were not released. Shyam Nath Kashyap Ghimire was released on 24 December 2000 after the authorities had released Thakur Nepal, who had been held in neighbouring Gulmi district on charges under the Arms and Ammunition Act. Amnesty International understands that the NC district committee had deposited money as surety for the release on bail of Thakur Nepal.

Other demands made by the Maoists include the payment of ransom, the performing of certain tasks such as repairing guns, and publicly accounting for public money.

Hostage-taking of police became a prominent feature of the “people’s war” in 2001. Some police were allowed to return home after they undertook to resign from the police force. Others were held until the Maoists’ demand for the release of Maoist prisoners was met. Others were put under pressure to join the Maoists.

One of the first reported hostage-takings of a police officer concerned DSP Thule Rai, who was taken captive on 23 September 1999 during an attack on a police checkpoint in Rukum district. In exchange for his return home, the Maoists demanded the release of a number of Maoist prisoners. He was allowed to return home in mid-December 1999. Soon after, Dev Gurung, a senior Maoist leader, was released.

The hostage-taking of at least 69 police personnel from Holeri police post, Rolpa district on 12 July 2001 and the demand for the release of half of all Maoist prisoners held in custody at the time is the most prominent example of hostage-taking. As of late September 2001, 22 of the officers had been allowed to return home. The others were allowed to do likewise in the following months.

‘People’s courts’

In areas under control of the CPN (Maoist), “people’s courts” have been set up to “adjudicate” on local disputes. These courts have also presided over “trials” and pronounced punishments, including “death sentences”.<sup>37</sup> For instance, on 27 August 2000 the Rolpa district unit of the CPN (Maoist) announced that “death sentences” had been imposed by “people’s courts” on seven people. It was not clear whether they were killed.

Among those known to have been “sentenced to death” and “executed” was Bhadra Sanjyal, a woman from Ward No. 2, Siuna VDC, Kalikot district. She was killed in mid-July 2001 after she was found “guilty” by the “people’s court” of passing information to the police. A notice was pasted in the village announcing the decision.

Some people have been sentenced in absentia. Amar Budha was reportedly found guilty by a “people’s court” for activities (spying) that led to the killings of 11 Maoists by police. He was subsequently shot dead by a group of students in Libang, Rolpa district on 21 April 2001.

Other punishments frequently imposed by the “people’s courts” include the shaving of people’s heads and garlanding them with shoes, a traditional way of showing disrespect. People have also been punished with “labour custody”. Among those treated this way were former deputy minister Reg Bahadur Subedi and his 24-year-old son, Suresh Subedi. They were taken on 14 April 2000 from their home at Gajul VDC, Rolpa district. Amnesty International received reports that they were seen engaged in construction work at Khara VDC in Rukum district in early June 2000. They returned home on 27 June and 24 July 2000 respectively. Amnesty International has appealed to the Maoist leadership to ensure that the conditions in which people are held do not amount to cruel, inhuman or degrading treatment or punishment. It has also conveyed its opposition to the imposition of “death sentences” by the CPN (Maoist) founded on Amnesty International’s total and unequivocal opposition to the death penalty as the ultimate cruel, inhuman or degrading form of punishment.

#### Child soldiers

Many children are involved in the Maoist movement with grave consequences for their safety and well-being. Although the exact number involved is not known, press reports suggest it could be several hundred. For instance, according to an article in *The Kathmandu Post* of 8 June 2000, of the 91 people known to have joined the Maoists and taken up arms in Lahan VDC in Jajarkot district, 13 were under 15 years old. An article posted on 1 May 1998 on a website sympathetic to the Maoists acknowledged the scale of recruitment of children, especially girls:

“A large number of children in the rural areas are now contributing substantially in the guerilla war by way of collection and exchange of information, etc. Indeed, these little ‘red devils’ hold immense potential for the future of the revolutionary people’s war.”

The killing of Tulsi Kumari Budha, a 16-year-old member of the All Nepal National Independent Students’ Union (Revolutionary), in Ramaroshan VDC in Achham district highlighted the dangers of children’s involvement in arenas of conflict, even in supporting roles. On 9 December 2000 police encircled a house in which Tulsi Kumari Budha was meeting known Maoists. Others present fled and Tulsi Kumari Budha hid in the maize fields nearby. Police surrounded the field. Tulsi Kumari Budha was killed in what police later said was an “encounter”. However, there was no evidence that she had been armed, nor that any police officers were injured or killed in the alleged “encounter”, suggesting that the incident involved excessive use of force in violation of international human rights standards in circumstances where Tulsi Kumari Budha could have been taken into custody.

[box]

In mid-2000 Amnesty International raised concern with the Maoist leadership about reports that children, including girls, were being recruited as combatants. Amnesty International opposes the voluntary or compulsory recruitment – in addition to the participation in hostilities – of children by

armed political groups and by governments. Amnesty International believes that recruitment – including in capacities such as couriers, messengers, porters, sentries or other support roles – and participation in hostilities are activities that ultimately jeopardize the mental and physical integrity of anyone below the age of 18. Additionally, such activities violate children's rights as enshrined in the UN Convention on the Rights of the Child, including their rights not to be separated from their parents, to protection from physical or mental harm, to education, to rest and leisure and to protection from economic exploitation and hazardous work.

Amnesty International has urged that anyone under 18 who has joined the CPN (Maoist), whether voluntarily or not, be told to return to their family or community. The raising of the minimum age for recruitment (whether voluntary or compulsory) to 18 is an important means for preventing these abuses from recurring. Amnesty International has urged the leadership of the CPN (Maoist) to make a public declaration of its policy in this area.

[end box]

Some children have been abducted by the Maoists against their will. For example, four students from Janapriya Secondary School were abducted from a hostel in Dasara, Jajarkot district on 8 June 2000. Three of them, Dhurba Raj Neupana, Lokendra Prasad Sharma and Basantha Kumar Kharka, all of whom were 15 at the time, had not returned to their families by mid-2001. A fourth boy, 14-year-old Man Bahadur Thapa, returned home after nine days.

In many cases, the children involved were not forced to join the Maoists, although they were enticed by others or joined under the influence of propaganda. For example, a 15-year-old girl belonging to a caste whose traditional occupation is dancing, attended a “cultural program” organized by the Maoists in Jajarkot district in early July 2000. She told Amnesty International that at the end of the program she joined up because “she liked to dance”, but after about two months she ran away as she was homesick. However, she was caught by Maoists and beaten with a stick. She said that when she asked to be allowed to leave, she was told she would “have to go nude and your head would have to be shaven”. A few days later, when the group was visiting a village where she had relatives, her uncle asked that she be allowed to return to her family. Both he and she were threatened with beheading. That night, she stayed with her relatives. The next day she was taken by eight armed Maoists to talk to the leader of the area. They walked for two days. When she told the leader that she wanted to leave, he refused. When she insisted, he beat her. She was kicked on her chin and again threatened that she would be killed. In the end, she was allowed to return home. When Amnesty International interviewed her four months later she was not living in her home village as she was afraid of both the Maoists and the police, and she was still suffering the after-effects of the beatings.

In a public statement of 23 August 2000, the Chairperson of the CPN (Maoist) denied that children had been recruited into the “people's army”. However, the statement did not respond in detail to Amnesty International's concerns that children had been abducted, nor to its appeal that they be immediately returned to their families and communities.

Some local commanders have maintained that children are not deployed as combatants, but have acknowledged that they are given tasks such as carrying guns. Others have stated that it is Maoist policy to discourage children from joining, but that some do under compelling circumstances such as when their parents have joined. It is not clear whether there is a uniform Maoist policy in relation to the recruitment of children.

[photo caption]

Comrade Ravi, aged 16, a member of the "People's Army" of the Communist Party of Nepal (Maoist), in Kureli village, Rolpa district, September 2001.

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[end caption]

Chapter 5: Conclusions and recommendations

The major challenge facing the government of Nepal is to provide increased human rights protection and create a law enforcement system capable of addressing reports of human rights violations with greater transparency and accountability.

Amnesty International recognizes the grave security threat posed by the “people's war”, but urges the government to adopt a holistic strategy to ensure the protection of the full range of human rights, including access to education, services and economic development as well as the protection of the rights to life, physical integrity and fair legal process.

Amnesty International calls on the government of Nepal to implement the specific recommendations outlined below. It also calls on the leadership of the CPN (Maoist) to uphold minimum humane standards applicable to the situation in Nepal, including those contained in Article 3 common to the four Geneva Conventions of 1949 which should be upheld by both police and members of the CPN (Maoist).<sup>38</sup>

To create a climate in which human rights violations are less likely to occur:

#### 1. Official condemnation

The government should publicly declare its opposition to human rights violations such as unlawful killings, including extrajudicial executions, “disappearances” and torture. A clear message should be given to members of the security forces that such violations will not be tolerated under any circumstances and that those found to be responsible for such violations will invariably be brought to justice.

#### 2. Chain-of-command control

The government should regularly issue clear and strongly worded directives to its security forces to adhere to the basic principles of international human rights and humanitarian law under all circumstances and to put into place mechanisms to monitor their adherence. Chief District Officers (CDOs) and senior army and police officers should maintain strict control to ensure that officers under their command do not commit human rights violations.

Officials who are found to have ordered or tolerated human rights violations by those under their command should be held criminally responsible for such acts.

#### 3. Individual responsibility

The prohibition of unlawful killings, including extrajudicial executions, “disappearances” and torture should be reflected in the training and all orders given to officials involved in the arrest and custody of prisoners and all officials authorized to use lethal force, and in the instructions issued to them.

These officials should be instructed that they have the right and duty to refuse to obey any order to participate in human rights violations. An order from a superior officer or a public authority must never be invoked as a justification for a human rights violation. All officials must be made aware that they will face criminal prosecution for such acts.

#### 4. Effective investigation and prosecution of alleged perpetrators of human rights violations

The government should remove all legal obstacles and create effective systems to ensure security personnel are held criminally accountable for human rights violations committed by them. The

definition of those responsible should include those who may have given orders as well as those who carried out the actions.

The government should ensure the independent and impartial investigation by the National Human Rights Commission (NHRC) or a similar independent body of all allegations of serious human rights violations. The investigators should have necessary resources and powers to carry out their work effectively, including powers to compel witnesses to attend and to obtain documentary evidence. The methods and findings of all such investigations should be made public in full.

Officials suspected of responsibility for unlawful killings, including extrajudicial executions, “disappearances” or torture should be suspended from active duty during the investigation. Complainants, witnesses, lawyers and others involved in the investigations should be protected from intimidation and reprisals. Special care should be taken to protect poor and illiterate victims who lack access to existing redress mechanisms such as the Torture Compensation Act (TCA).

The government should consider appointing special prosecutors charged with ensuring effective investigations and the supervision and, if necessary, initiation of prosecutions of security personnel.

#### 5. Reparation, including compensation

The government should provide all victims of human rights violations or their relatives with reparations, including fair and adequate compensation. Victims of unlawful killings, including extrajudicial executions, “disappearances” and torture or their relatives who seek compensation should be free from threats or intimidation. Victims should be provided with appropriate medical care and rehabilitation.

#### 6. Use of emergency powers

The government should ensure that those fundamental human rights which are deemed non-derogable in international law are fully protected in Nepali law. To this end, the government should consider introducing a constitutional amendment to remove Article 23 of the list of constitutional clauses which may be suspended during a state of emergency.

#### 7. Reform of the police

The government should consider the establishment of a permanent, independent complaints authority as a measure to ensure the public accountability of the police. Such a body should be able to function at the local level and be given the powers to carry out continuous assessments of the police’s own measures to ensure compliance with national and international regulations on the use of force; to prevent torture and corruption; to record the incidence of complaints of excessive force; and where necessary to conduct its own investigations. This would promote greater transparency and accountability among the police and contribute to the fulfilment of its function as a community service.

The government should review and improve the conditions of service of the police as well as their right to organize and express themselves, enabling them to enhance standards of professional practice and resist improper interference by political and other local forces.

Police at all levels should be given extensive training in international human rights standards, the investigation of crime without resorting to torture or cruel, inhuman or degrading treatment and regarding the police's proper role vis-a-vis the judiciary and generally in implementing the rule of law.

#### 8. Strengthen the National Human Rights Commission

The government should give the NHRC all necessary assistance to ensure its independent and effective functioning.

Offices of the NHRC should be established at the district or at least at the regional level, with priority for those areas where most human rights abuses are reported.

The law should be amended to ensure the NHRC has effective powers to investigate all human rights violations.

#### 9. Strengthen Nepal's international human rights commitment

The government should fully implement the recommendations made by the UN Working Group on Arbitrary Detention and the Special rapporteur on extrajudicial, summary or arbitrary executions after their visits to Nepal in 1996 and 2000 respectively.

The government should consider inviting these two bodies to visit the country again to discuss implementation of their recommendations.

The government should consider inviting the UN Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit the country.

The government should prepare its outstanding reports to the treaty bodies, to obtain assistance and guidance in implementing the country's existing human rights obligations.

The government should give all necessary assistance to the International Committee of the Red Cross to monitor adherence to international humanitarian law.

#### 10. Safeguard children's rights

Nepal should ensure that its obligations under the Convention on the Rights of the Child are fulfilled in law and in practice.

The Convention on the Rights of the Child places the best interests of the child at its guiding principle (Article 3). It obliges states to “recognize that every child has the inherent right to life” and to “ensure to the maximum extent possible the survival and development of the child” (Article 6). It requires that children should not be subjected to torture or other cruel, inhuman or degrading treatment or punishment or deprived of liberty unlawfully or arbitrarily (Article 37). It also requires states to respect and ensure respect for the rules of international humanitarian law which are relevant to children (Article 38).

To bring a halt to unlawful killings, including extrajudicial executions:

#### 11. Legal measures

The government should consider introducing a constitutional amendment guaranteeing the non-derogable right to life.

The government should review and amend existing legislation, particularly the Local Administration Act, the Police Act and the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), to ensure that there are strict legal limitations on the use of force and firearms by the police, in accordance with international standards.

#### 12. Restraints on use of force

The government should ensure that the security forces only use force when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable and only in order to protect life.

### 13. Ensure proper investigations into alleged extrajudicial executions

The government should order a review of post-mortem procedures in cases of suspicious death. It should bring an immediate halt to the practice of disposal of bodies without post-mortem and ensure that post-mortem examinations are carried out in all cases of suspicious death and independently of anyone implicated in the death. A medical or other representative of the family of the deceased should be allowed to be present during the examination. Relatives of the victims should be given access to all information relevant to the investigation.

To put a halt to ‘disappearances’:

### 14. End incommunicado detention

The government should end the practice of incommunicado detention and draw up regulations to safeguard the rights of detainees, including their constitutional right to be produced before a judicial authority within 24 hours of arrest. All detainees should be held in publicly recognized places. They should be brought before a judge promptly after arrest and they should have prompt and regular access to relatives, lawyers and doctors.

In order to facilitate the search for missing persons, all authorities in charge of places where detainees are held (such as army camps, police stations, police posts, prisons) should be required to provide to a competent civilian authority periodically updated lists of detainees in their custody. Registers of detainees should be kept, including a central register of detention. Adequate provision should be made for registration of transfers of detainees from one place of detention to another. Detention registers should be accessible to interested parties.

### 15. Legal measures

The government should consider making “disappearance” a criminal offence under Nepali law.

The government should ensure that the relatives of someone who, after proper investigation, is proven to have last been seen in the custody of the state, are granted adequate compensation.

To put a halt to torture:

### 16. Legal measures

The government should ensure that the act of torture is a punishable offence under criminal law.

The government should amend the TCA to make the investigation and prosecution of alleged perpetrators of human rights violations and reparation for victims more effective.

### 17. Strengthen safeguards against torture

The government should review procedures for detention and interrogation. An important safeguard against torture would be the separation of authorities responsible for detention from those in charge of interrogation. All prisoners should be promptly told of their rights, including the right to complain about their treatment to a judge. There should be regular independent visits of inspection to places of detention, including unannounced visits by local judges or respected members of the community. The government should ensure that all detainees are held in publicly recognized places, and that accurate information about their whereabouts is made available to relatives and lawyers.

There should be a review of procedures currently used when taking detainees for medical examination. Procedures should be amended to ensure they are in line with international standards and incorporate safeguards already contained in national legislation, including the TCA.

The government should introduce effective measures to prevent rape and make them legally enforceable, with adequate punishment for non-adherence. It should ensure that the arrest of a woman is carried out by a female officer (whenever practicable), that women detainees are kept in the custody of female officers, that female guards are present during the interrogation of female detainees and are made solely responsible for carrying out body searches.

#### 18. Effective investigation and prosecution of alleged perpetrators

The government should ensure that failure to investigate suspicious deaths and allegations of torture is made punishable.

To promote respect for the rights of detainees and their families:

#### 19. Legal measures

The government should amend the Public Security Act (PSA), the Anti-State Crimes and Penalty Act and TADO to ensure their compliance with international standards regarding safeguards against arbitrary detention, torture and cruel, inhuman or degrading treatment.

The government should remove all judicial powers granted to Chief District Officers in the PSA, Arms and Ammunition Act, Local Administration Act and the Some Public Offences and Penalties Act.

#### 20. Limits to preventive detention

The government should not detain anyone arbitrarily and should ensure effective judicial supervision of anyone held in preventive detention.

### ENDNOTES

#### Chapter 1: Introduction

<sup>1</sup> At the time of writing, Nepal was a party to 16 human rights treaties, including the International Covenant on Civil and Political Rights and its first and second optional protocols; the International Covenant on Social, Economic and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. In addition, Nepal has signed, but not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

<sup>2</sup> The Maoists' opposition to the teaching of Sanskrit, an ancient South Asian language, is based on the grounds that it assists in perpetuating the predominance of the Brahmin community and disadvantages children from ethnic minorities.

<sup>3</sup> For more information on the findings of these visits, see AI documents, Nepal: Human rights violations in the context of a Maoist "people's war" (AI Index: ASA 31/01/97) of March 1997, Nepal:

Human rights at a turning point? (AI Index: ASA 31/01/99) of March 1999, Nepal: Human rights and security (AI Index: ASA 31/01/2000) of February 2000, and Nepal: Make torture a crime (AI Index: ASA 31/002/2001) of March 2001.

<sup>4</sup> The Chairman of the UN Working Group on Arbitrary Detention visited in 1996; the UN Special Rapporteur on extrajudicial, summary or arbitrary executions visited in 2000.

<sup>5</sup> See UN document, E/CN.4/2001/9/Add.2, para. 58.

<sup>6</sup> The action plan is being prepared as per the recommendations made by the 1993 Vienna World Conference on Human Rights, which required each of the member states to draw up a national action plan and identified steps to improve and protect human rights.

<sup>7</sup> For the full report, see UN document, E/CN.4/1997/4/Add.2. (For more details on the recommendations, see Chapter 8.)

## Chapter 2: Background

<sup>8</sup> The Partido Comunista del Peru (Sendero Luminoso) was responsible for extensive human rights abuses after it declared "people's war" in Peru in 1980. They gained control over large parts of Peru's countryside. After major counter-insurgency operations, they were defeated by the Peruvian army in the early 1990s. They continue to be active in the remote departments of Ayacucho, Junin, Huanuco and San Martin.

<sup>9</sup> This date in the Gregorian calendar coincides with 1 Falgun 2052 in Nepal. Falgun is the 10th month in the Bikram Sambat, the standard Hindu calendar used in Nepal.

<sup>10</sup> Bulletin No. 1, May 1996, published by the Central Publicity Division of the CPN (Maoist).

<sup>11</sup> The Independent, Kathmandu, 6-12 March 1996

<sup>12</sup> Some observers claim this is a coded message for "Search to Kill".

<sup>13</sup> Ganesh Man Singh was a popular leader of the NC who led the opposition against the Rana regime in the 1950s and the MRD in 1990. He died in 1997.

<sup>14</sup> Under Article 72 of the Constitution, Ordinances may be promulgated by the King at the time both Houses of Parliament are not in session if he is satisfied that the "existing circumstances demand an immediate action". They have to be approved by Parliament within 60 days of the commencement of the next session of both Houses or will, ipso facto, cease to have effect after six months of their promulgation.

<sup>15</sup> This constitutional body comprises the Prime Minister, Defence Minister and Commander-in-Chief of the army. The King of Nepal, who is the Supreme Commander of the army, is responsible for the operation and deployment of the army on the recommendation of the National Defence Council.

<sup>16</sup> The NHRC consists of five members. Its chair is a retired Chief Justice. Other members are a social worker/medical doctor, a retired senior civil servant and two human rights activists. According to the Act, the NHRC has the power to investigate any "violation of human rights and abetment thereof" and "review the existing human rights situation". It is, however, explicitly excluded in the Act from investigating any "matter under the jurisdiction of the Army Act" and any matters "certified by the Attorney General that it may have adverse effect on an inquiry and investigation of any crime pursuant to the law."

### Chapter 3: Abuses by state agents

<sup>17</sup> For instance, during a meeting with an Amnesty International delegation in November 1999, the Secretary, Ministry of Home Affairs stated that unlawful killings were investigated by his department "when there was public outcry".

<sup>18</sup> For more details on the TCA and Amnesty International's recommendations for amendments and changes to the way in which the law is currently being put into practice, see Amnesty International's report, Nepal: Make Torture a Crime (AI Index: ASA 31/002/2001) of March 2001

<sup>19</sup> Article 12(1) merely states that "no law shall be made which provides for capital punishment" but does not positively include the right to life.

<sup>20</sup> The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) state that force and firearms should only be used "if other means remain ineffective" (Principle 4); that officials should "exercise restraint ... and action in proportion" and should "minimize damage and injury, and respect and preserve human life" (Principle 5); and that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life" (Principle 9). Further, Principle 8 states, "Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles". Investigations into these killings should include an examination of steps taken to ensure that such international standards were adhered to. Amnesty International urges the government to take measures to ensure such adherence in the future and would welcome any information about such measures.

<sup>21</sup> The Observer, London, 9 April 2000.

<sup>22</sup> Traditional Nepali curved knife.

<sup>23</sup> See footnote 20.

<sup>24</sup> Kathmandu Post, 8 March 2001

<sup>25</sup> According to Article 14(6) of the Constitution, a person who is arrested and detained has to be produced before a judicial authority within 24 hours of the arrest, excluding the period of the journey to the authority. This right cannot be suspended during a state of emergency.

<sup>26</sup> According to the report of the WGEID of 18 December 2000 (UN Ref: E/CN.4/2001.68), it submitted 51 cases of "disappearances" said to have occurred between 1998 and 2000 to the government, only five of which had been clarified by the end of 2000. Amnesty International understands that at least 40 more cases were submitted during 2001.

<sup>27</sup> For more details, see *Indelible Scars: A study of torture in Nepal*, published by the Centre for Victims of Torture, Kathmandu, 1994.

<sup>28</sup> Article 15 of the Convention against Torture requires states parties to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

<sup>29</sup> These are only a few examples of the obstacles put in the way of a doctor by police. For more details, see *Nepal: Make Torture a Crime*, pages 12-14.

<sup>30</sup> See UN document M/CCPR/52/C/CMT/NEPAL/3, para. 2.

<sup>31</sup> Apart from being late with the submission of two reports to the Committee against Torture, Nepal is also overdue with submitting reports to the Human Rights Committee, the Committee on the Rights of the Child, the Committee for the Elimination of Discrimination against Women and the Committee for the Elimination of Racial Discrimination.

<sup>32</sup> See UN document: M/CCPR/52/C/CMT/NEPAL/3, para. 18.

<sup>33</sup> Article 2(3) guarantees the right to an effective remedy, to have that right determined by a competent judicial, administrative or legislative authority and to ensure that the competent authorities shall enforce such remedies when granted.

<sup>34</sup> According to Article 115(2) to 115(5) of the Constitution, a state of emergency has to be approved by a two-thirds majority of the House of Representatives within three months of its initial proclamation. One further extension of six months is possible within six months of the original decision; but the total period a state of emergency remains in force cannot exceed 12 months.

<sup>35</sup> The Human Rights Committee and the European Court have made clear that the body reviewing the lawfulness of detention must be a court, in order to ensure a high degree of objectivity and independence. The European Court has also ruled that the detention must comply with both the substantive and the procedural rules of national legislation. Courts must also ensure that the detention is not arbitrary according to international standards.

#### Chapter 4: Abuses by the Maoists

<sup>36</sup> According to international humanitarian law, civilians and others not taking an active part in hostilities should be protected at all times. Hostage-taking is specifically prohibited under Article 3 common to the four Geneva Conventions. Common Article 3 affords protection to "Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause". Abductions of civilians such as Mukti Prasad Sharma and Shyam Nath Kashyap Ghimire and the conditions reportedly set for their release make them a hostage within the meaning of the Geneva Conventions. Amnesty International would consider as hostages police who are held solely for the purpose of compelling a third party, by conditioning the life, security or liberty of the individual on the actions or inaction of that party, or solely for the purpose of compelling the hostage to a particular action or inaction. Amnesty International urges the Maoist leadership to release all civilians and police held under such conditions.

<sup>37</sup> According to Article 4[D], Sub-Article [A] in Prachanda Path, the party doctrine adopted at the second national convention in February 2001, there is provision of death penalty for several crimes, including crime against the Maoist "people's state".

#### Chapter 5: Conclusions and recommendations

<sup>38</sup> For more details on Amnesty International's recommendations to the CPN (Maoist), see Chapter 4.